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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals on the judgment under review (R. 419–424) is reported at 348 F. 2d 355; the district court's opinion (R. 206–208) is not reported. The first opinion of the court of appeals is reported at 280 F. 2d 678, and the opinion of this Court reversing the court of appeals' first decision (*sub nom. Russell* v. *United States*) is reported at 369 U.S. 749.

JURISDICTION

The judgment of the court of appeals (R. 424) was entered on May 27, 1965, and a petition for rehearing was denied on July 23, 1965 (R. 435). On July 30, 1965, Mr. Justice White extended the time for filing

a petition for a writ of certiorari to and including September 21, 1965 (R. 436). The petition was filed on that day, and granted on December 6, 1965 (R. 437; 382 U.S. 937). The jurisdiction of this Court is invoked under 28 U.S.C. 1245(1).

QUESTIONS PRESENTED

Petitioner was convicted of contempt of Congress by reason of having refused (not on self-incrimination grounds) to testify at a hearing of a subcommittee of the Committee on Un-American Activities of the House of Representatives. The questions presented are as follows:

I

1. Whether the investigation exceeded the powers of Congress, on the theory that it had no *bona fide* legislative purpose but was conducted solely for the sake of exposure.

2. Whether subpoenaing petitioner to testify at the hearing constituted a forbidden bill of attainder.

3. Whether Rule XI of the House of Representatives—the mandate of the House Un-American Activities Committee—is unconstitutionally vague.

4. Whether petitioner's refusal to testify was protected by the First Amendment.

II

5. Whether the Committee (a) authorized the investigation in question and (b) delegated authority to conduct it to the subcommittee before which petitioner appeared.

6. Whether petitioner was adequately apprised of the pertinency of the questions that he refused to answer.

7. Whether he was adequately apprised that the subcommittee had rejected his objections to answering the questions.

III

8. Whether the indictment sufficiently alleged the subcommittee's authority.

STATUTES AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, Rule 7(c) of the Federal Rules of Criminal Procedure, and Rule I of the Rules of Procedure of the House Committee on Un-American Activities are printed in the appendix to petitioner's brief. See, also, p. 89, n. 58.

STATEMENT

INTRODUCTION

Petitioner was summoned as a witness before a hearing conducted early in 1955 by a subcommittee of the Committee on Un-American Activities of the House of Representatives as part of an investigation of Communist activities in the labor field. He refused to answer a number of questions put to him by the subcommittee, on a number of different grounds (not including self-incrimination). He was convicted upon an indictment returned in December 1955, of having wilfully refused to answer six questions pertinent to matters under inquiry by the Committee, in

violation of 2 U.S.C. 192. The conviction was overturned by this Court *sub nom. Russell* v. *United States,* 369 U.S. 749, on the ground that the indictment was defective. He was reindicted for the same offense and again convicted. The court of appeals affirmed, and the case is here on certiorari.

I. THE FACTS

A. THE BACKGROUND OF THE INVESTIGATION

As part of a continuing investigation into Communist activities in the labor field, including infiltration into labor organizations and dissemination of Communist labor propaganda, the House Un-American Activities Committee had been engaged intermittently in investigating alleged Communist Party activities by officials of the United Electrical, Radio and Machine Workers of America (U.E.) from August 1949 until February 1955 when petitioner appeared before the Committee (GX 11, 13; R. 17).[1] It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former member of the Communist Party, that the Communist Party had infiltrated the union to the extent that, of its important officials, "99.9 percent" were "pure Communist Party members" (R. 17-18). In July 1953 another former Communist Party member, Jack Davis, who had been an organizer for

[1] Rule XI of the House of Representatives, 60 Stat. 828, H. Res. 5, 84th Congress, authorizes the Committee to investigate un-American and subversive propaganda and activities. It is set forth in pertinent part at p. 89, n. 58, *infra.*

the U.E., testified that all of the U.E. organizers who attended meetings were members of the Communist Party (R. 18–19). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 19).

On February 9, 1955, at a meeting of the Committee held from 10 a.m. to 11 a.m. that day, seven members present, a motion was made and passed that petitioner be subpoenaed to appear "before a Subcommittee of the Committee on Internal Security" (*sic*) in open hearings at Fort Wayne, Indiana. At the same meeting, the Chairman of the Committee (Congressman Walter) appointed a subcommittee to conduct the Fort Wayne hearings (GX 5, R. 212–213; R. 10). On January 20, 1955, the Committee, in executive session, eight of the nine members being present, had adopted a resolution that its Chairman be authorized to appoint subcommittees "for the purpose of performing any and all acts which the Committee as a whole is authorized to perform" (GX 4, R. 209).

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana, on February 21 (R. 94, 123–124). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 123, 407). On February 10, Congressman Walter received a telegram from petitioner protesting on behalf of the union the scheduling of the hearings for February 21, in view of a National Labor Relations Board election scheduled to be held at the Magnavox plant on

February 24, 1955, involving the U.E. and rival unions (GX 9, R. 125–127). The telegram claimed, among other things, that the hearing would be a "flagrant use of a Congressional Committee for union-busting," that "we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union-busting," and that the Committee was run by "publicity-mad zealots" who "tarnish" the Congress with their "stench" (R. 125–127).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 115). Because of the tone of petitioner's telegram, Mr. Goldstein's request was heard before the Committee at a recorded session (R. 115-116, 119), at which the Chairman told Mr. Goldstein that the Committee had first learned of the NLRB election when the Chairman received petitioner's telegram (R. 116). The following exchange then took place (R. 116).

> Mr. GOLDSTEIN. Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the NLRB] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.
>
> Chairman WALTER. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting.

> Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Although repeatedly asked to do so (R. 117–119), Mr. Goldstein refused to state any definite knowledge he might have about an NLRB election. The Committee adjourned without any action being taken (R. 119).

Petitioner's subpoena to appear at the February 21 hearing, dated February 10, was served upon him on February 15, 1955 (R. 14, 95). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance until "any time after next week" because of the attorney's heavy schedule and the impending NLRB election at the Magnavox Company (R. 14). The request was at first denied. But, after further communication between counsel, Mr. Tavenner inquired into the proposed election and explained the situation to Chairman Walter, who agreed that the hearings be postponed (R. 15). By Committee resolution of February 23, 1955, the hearings were rescheduled for February 28, 1955, in Washington, D.C. (Gov't Ex. 7, R. 215). Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 15–16).

B. THE QUESTIONING OF PETITIONER

Petitioner appeared on February 28 and March 1, 1955, before the subcommittee (see p. 5, *supra*) in

Washington, D.C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the chairman, explained the purposes of the hearing as follows (R. 219):[2]

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

There was testimony that petitioner was present when the hearing began (R. 103–109). Before the first witness, Julia Jacobs, was sworn, her attorney filed with the Committee, on her behalf and on behalf of two other clients of his, petitioner and Lawrence Cover, also subpoenaed to appear before the subcommittee (R. 220), a motion "for incorporation in the record" (DX 1; R. 83, 405–406) claiming that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses and that, in any event, under Article I, Section 3 of the Constitution only the courts can investigate crime; that the Committee's authorizing resolution did not give it the power to engage in breaking a union and that, if it purported to confer this power, it violated the First Amendment; that the

[2] GX 12 is the record of the Hearing before the Committee on Un-American Activities, House of Representatives, 84th Congress, 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Ind., Area.* The hearings appear at two points in the record. Portions appear at R. 42–82 as read by government counsel below, and the complete hearings so far as relevant to this case at R. 216–400.

authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the outset of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (R. 242). After a colloquy concerning "union busting," Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (R. 254–255). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of its general executive board (R. 261–262).

When asked whether he had ever been a member of the Communist Party while holding any of these union offices, petitioner stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting" (R. 263). The question was rephrased several times, but he still refused to answer, citing as ground for his refusal to answer that he had signed affidavits annually from 1949 to 1954 that he was not a Party member, and that the question violated the First Amendment (R. 262, 264). Petitioner was then asked whether he had ever been a member of the Communist Party (R. 265), and again invoked the First Amendment, disclaiming any reliance on the Fifth Amendment (R. 266). He was also asked whether he had been a Party member at any

time during 1948 (R. 268), and he refused to answer on the ground that the question violated the First Amendment and that the hearing had no legislative purpose (R. 268). He then refused to say whether he was "now a member of the Communist Party,"[3] on the grounds that his affidavit stated that he was not a Communist, that the question violated the First Amendment, and that "I am not going to cooperate with union busters" (R. 269–270). The hearings were then adjourned for the day.

Petitioner was the first witness when the hearings were resumed on March 1, 1955. After further questions about Communist activities in labor unions (R. 271–273, 276), the Committee asked whether petitioner had attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 277). The Committee read to petitioner the minutes of the meeting, which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the *Daily Worker*. Petitioner could not recall these events, nor could he recall who was the Party secretary or chairman in Indiana at the time (R. 280). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 283). The Committee counsel asked petitioner whether he was acquainted

[3] This refusal formed the basis of count one of the present indictment. See p. 15, *infra*. The other questions on which the indictment was based are indicated in the text.

with Elmer Johnson[4] (R. 280). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (R. 287). Petitioner refused to answer this question (*count two*). He based his refusal on the ground of the Committee's alleged use of paid informers, whom he called liars, on the First Amendment, and on the Committee's lack of authority under its authorizing resolutions to break a union (R. 289–290).

After charging that a former member of the Committee had used a "paid liar's testimony to try to break [a] strike," petitioner refused to say whether he knew Henry Aron[5] on the same grounds that he had refused to answer the earlier questions, particularly the First Amendment and the Committee's use of informers (R. 293–294). He was subsequently asked, and refused to answer on the basis of the First Amendment, whether Johnson or Aron had ever addressed a group of people when petitioner was present (*count three*) (R. 296). Petitioner was also questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (R. 305, 310, 319, 321–324, 334–338). During this discussion, after petitioner objected that the Committee was at-

[4] The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 21).

[5] The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 19–20).

tempting to find him guilty without a trial, Congressman Doyle stated (R. 327):

> [W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

Petitioner testified that he knew a Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as legislative representative of the U.E. in Washington.[6] Petitioner said that he would not answer questions concerning political beliefs and affiliations because the Committee lacked jurisdiction (R. 340–342). He then refused for the second time to say whether he knew Russell Nixon to be a member of the Communist Party (*count four*), on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (R. 341–342).

The Committee's counsel handed petitioner a letter to him from Russell Nixon, sent immediately after a "peace pilgrimage" to Washington, enclosing a letter

[6] Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his alleged Communist Party activities (R. 73–76). Dorothy Funn, a former member of the Communist Party, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 28–32).

from the Metal Workers Trade Union, an organization that the Committee had reason to believe was Communist-dominated (R. 350, 352–357). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (R. 360). Committee counsel noted that petitioner had said that he had been involved in many meetings on behalf of peace, and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (R. 361). Petitioner then refused to answer the question whether he had taken "an active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (*count five*) (R. 361–362). When petitioner indicated that the basis of his refusal to answer was the First Amendment, the Committee counsel said (R. 362):

> I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. * * *

Congressman Doyle said (R. 362–363):

> Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a

> member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused, on the grounds he had already stated, to say whether he had taken part in the pilgrimage to Washington, whether he was a member of the American Peace Crusade, and whether he had frequently served as chairman of its meetings (R. 366).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker, which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 368; see R. 22).[1] Petitioner refused, on the grounds he had previously stated, to answer the question who had solicited him as sponsor; nor would he say what method of solicitation had been used (*count six*) (R. 369).

II. THE PROCEEDINGS

A. THE FIRST TRIAL AND APPEAL

In December 1955, petitioner was indicted for willful refusal to answer questions pertinent to a subject under inquiry by Congress, in violation of 2 U.S.C. 192. The indictment was in nine counts, each based on the refusal to answer one of the questions put to peti-

[1] The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack," subtitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 22–25).

tioner at the Washington hearings. He was convicted on six of the counts and his conviction was affirmed by the Court of Appeals for the District of Columbia Circuit. *Gojack* v. *United States*, 280 F. 2d 678. This Court granted certiorari to review the judgment of the court of appeals (along with the judgments in five other contempt-of-Congress cases). A number of issues were tendered to the Court, but only one—common to all six cases—was decided. The Court held that the indictments of Gojack and the other defendants were insufficient because they did not allege the subject of the inquiry to which the questions asked were alleged to be pertinent. Accordingly, the judgment in Gojack's case was reversed. *Russell* v. *United States*, 369 U.S. 749.

B. THE SECOND TRIAL AND APPEAL

Gojack was reindicted for the same offense of which he had been convicted—that is, the alleged willful refusal to answer the six questions (R. 1–3). This time, the indictment set forth the subject of the Committee's inquiry. Petitioner waived trial by jury. He was found guilty on all six counts and given a general sentence of three months' imprisonment plus a $200 fine (R. 8–9). Petitioner appealed. While not contending that the new indictment was deficient under the rule of this Court's *Russell* decision or that the Court's mandate had been disobeyed in redrawing the indictment, petitioner renewed the contentions he had made in the earlier round (and which this Court in *Russell* had not reached). The court of appeals unanimously affirmed the conviction (348 F. 2d 355), rejecting most of petitioner's grounds summarily

but discussing expressly petitioner's contention that the Committee had failed adequately to apprise him that his objections to the hearings had been overruled.

SUMMARY OF ARGUMENT

In this contempt-of-Congress case, petitioner raises numerous issues. They are of three kinds. First, there is a sweeping attack, under a variety of overlapping constitutional rubrics—the limits of the Legislature's powers, free speech, bill of attainder, vagueness—on the legitimacy of investigations by the House Un-American Activities Committee into Communist activities, petitioner's ultimate thesis being that the Committee is powerless (quite apart from problems of self-incrimination under the Fifth Amendment, which petitioner did not invoke) to compel the disclosure by witnesses of Communist activities and associations in the circumstances of this case—and indeed of all cases. We regard these broad contentions as foreclosed by the prior decisions of this Court in this field (*Barenblatt* v. *United States,* 360 U.S. 109; *Wilkinson* v. *United States,* 365 U.S. 399; *Braden* v. *United States,* 365 U.S. 431; *Gibson* v. *Florida Legislative Comm.,* 372 U.S. 539, 547, 549), but, in view of the importance of the question, we devote Part I of our argument to its answer.

The second type of issue raised by petitioner (to which we devote Part II) relates to the particular procedures of the Committee in questioning petitioner. The issues here are less far-reaching; we show that they were correctly resolved below. In Part III, we take up another relatively narrow

issue—petitioner's challenge to the sufficiency of the present indictment—and show that petitioner's contention is without merit. Thus, we conclude, petitioner's conviction suffers from no infirmity warranting reversal.

I

It is fundamental, we think, that Congress could not adequately discharge its legislative functions if it were denied a broad power of inquiry and investigation (including the use of compulsory process to elicit testimony not otherwise privileged) into subjects of proper legislative concern. This Court has many times declared—and numerous legislative enactments upheld by this Court attest—that Communist activities are such a subject. We therefore regard as settled the proposition that Congress has a valid and lawful interest in conducting investigations with the object of obtaining information concerning such activities as a possible predicate of appropriate antisubversive legislation.

The hearings at which petitioner was questioned were part of such an investigation. Communist infiltration of labor unions has been a continuing topic of congressional concern and legislation, and the House Un-American Activities Committee had reason to believe both that the union of which petitioner was an important official was dominated by Communists and that petitioner could supply valuable information concerning Communist activities in the union. The questioning of petitioner by the Committee was designed to elicit such information, clearly relevant to a proper subject of legislation.

Against this background, petitioner's attack upon the constitutional legitimacy of the Committee's questioning of him must, in our view, fail. Petitioner to the contrary notwithstanding, the purpose of the investigation was not exposure for exposure's sake. Rather, the objective was to gather evidence in an area of legitimate congressional concern. In light of this valid legislative purpose, there is no occasion to search the motives of individual members of the Committee.

Once the existence of a valid legislative purpose is established, other broad arguments advanced by petitioner likewise fall. Since exposure for its own sake was not the purpose of the hearing, there can be no contention that petitioner was the victim of a bill of attainder—even under petitioner's view of the scope of the Attainder Clause. And Rule XI of the House of Representatives (which authorizes the House Un-American Activities Committee to investigate un-American and subversive activities and propaganda) is not unconstitutionally vague, as petitioner contends. It is not a mandate for improper investigations, nor even a penal or prohibitory statute. Moreover, the particular subject of a hearing at which a witness is questioned must be adequately defined and explained in advance (as it was here), thereby dispelling any possible uncertainty.

Finally, petitioner's freedom of belief or association was not infringed by compelled disclosure of facts pertinent to a legitimate subject of congressional inquiry and legislation. Applying the standards of *Barenblatt* v. *United States* and the cases following it

(pp. 54-59, *supra*), we think that the strong public interest in this investigation and in eliciting the testimony sought from petitioner outweighed his interest in maintaining secrecy. Indeed, as we explain, this is an a *fortiori* case in this regard compared to the prior cases.

II

Petitioner's challenge to the specifics of the Committee's proceeding is likewise without merit. Plainly, the investigation in the course of which petitioner was subpoenaed to testify was approved by the Committee as required by its Rule I; and plainly, too, the Committee properly delegated its authority to conduct the hearings in question to the subcommittee that conducted them. Since petitioner failed to raise at the hearings the issue whether he was adequately apprised by the Committee that the questions he refused to answer were pertinent to the subject under inquiry (as required by 2 U.S.C. 192), that issue is foreclosed here (*Barenblatt* v. *United States*, 360 U.S. 109; *Deutch* v. *United States*, 367 U.S. 456); but in any event the Committee gave petitioner repeated detailed explanations of the pertinency of the questions and it is clear that he was in fact fully apprised thereof. Petitioner's contention that the Committee was required, and failed, to overrule his written objections to the Committee's jurisdiction before he was questioned was never raised in the courts below and hence also is not properly before this Court. Nor is there merit in the claim. The record establishes that petitioner's objections were rejected and that he knew such to be the case. In short, none of

the alleged defects in the Committee's procedures in this case constitutes reversible error.

III

The indictment—cured, as all agree, of the deficiency found by this Court when last the case was here—was sufficient. It not only alleged that the hearings at which petitioner was questioned were authorized by Congress (all we think need be alleged); it also set forth the entire chain of authority from Congress to the particular subcommittee that conducted the hearings in question. No link in the chain was omitted, and surely no further allegations of authority were necessary to enable petitioner to prepare his defense. Applying the general principles underlying this Court's decision in *Russell* v. *United States*, 369 U.S. 749, we believe that the indictment was clearly adequate.

ARGUMENT

I. THE COMPELLED DISCLOSURE OF PETITIONER'S COMMUNIST ACTIVITIES AND ASSOCIATIONS WAS (THERE BEING NO FIFTH AMENDMENT CLAIM OF SELF-INCRIMINATION) WITHIN THE LAWFUL POWER OF CONGRESS

We first consider the broad question, raised by petitioner in a variety of guises, whether it is within the lawful power of Congress to investigate (with the aid of compulsory process) Communist activities and associations, in general, and this petitioner's activities and associations, in particular. We preface our discussion of this point with a review of settled principles governing the investigative power of Congress, and its application in the field of subversive activities.

Actually, however, petitioner's broad attack on the authority of congressional committees to compel disclosure of subversive activities and associations in the circumstances of the present case is foreclosed by this Court's prior decisions. In *Barenblatt* v. *United States,* 360 U.S. 109, the Court held that the use of compulsory process to elicit testimony in aid of congressional investigations of Communist activities, in circumstances comparable to those of the present case, has a valid legislative purpose and does not violate the First Amendment. This holding was reaffirmed in *Wilkinson* v. *United States,* 365 U.S. 399, and *Braden* v. *United States,* 365 U.S. 431. And, just two Terms ago, in *Gibson* v. *Florida Legislative Comm.,* 372 U.S. 539, 549, the Court noted that it is constitutionally "permissible [for the Legislature] to inquire into the subject of Communist infiltration of educational or other organizations," because the "governmental interest in controlling subversion and the particular character of the Communist Party and its objectives outweigh the right of individual Communists to conceal party membership or affiliations." Communist Party membership is "a permissible subject of regulation and legislative scrutiny." P. 547.

Petitioner to the contrary, there is no occasion to reconsider those decisions.[8] The underlying principle

[8] Petitioner asks overruling of these cases on the ground that in recent years the menace of Communism has subsided. But, surely, this is an argument properly addressed to Congress, not this Court; it calls for a legislative judgment. *Cf. Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1. In any event, the argument is hardly pertinent here, since the hearings at which petitioner refused to answer the Committee's

of the cases—that in requiring a witness to testify concerning subversive Communist activities Congress is exercising an inherent power to investigate and does not violate the First Amendment—is in accord with our constitutional history and is sustained, as we shall show, by a score of related precedents resting upon the same hypothesis concerning the nature of the Communist movement.

A. THE INVESTIGATION OF COMMUNIST ACTIVITIES, SPECIFICALLY IN THE LABOR FIELD, SERVES A VALID LEGISLATIVE PURPOSE

1. Congress Has Power To Require Testimony, Not Otherwise Privileged, in Aid of an Investigation Into Any Proper Subject of Congressional Legislation

In *Watkins* v. *United States*, 354 U.S. 178, the Chief Justice wrote (p. 187):

> The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. * * *

History—and this Court's decisions—confirm that this inherent constitutional power to compel testimony in aid of investigations extends to any subject upon which Congress has power to legislate. Early in the sixteenth century (and increasingly after the Revolution of 1688 established the supremacy of Parliament) Parliament as a whole, or one of its

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questions were held in 1955—one year after the hearings involved in *Barenblatt* and three years *before* those involved in *Braden* and *Wilkinson*.

many committees, conducted investigations compelling the production of persons or papers during its investigations. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 159–164. These powers were carried over to the United States both in the colonial and later in the State legislatures, and until 1880 no State court denied or even limited the power of a State legislature to investigate. Landis, *supra*, pp. 165–167.[9] The power of Parliament to investigate was also, it appears, vested in Congress.[10] At the time of the constitutional convention, legislative power in common-law countries included the power to form

[9] The basis of this power in the United States was aptly summarized by a New York court (*Briggs* v. *MacKellar*, 2 Abb. Pr. 30, 56–57):

> It is a well-established principle of this parliamentary law, that either house may institute any investigation having reference to * * * any matter affecting the public interest upon which it is important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function * * *. In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee, is, as a parliamentary usage, as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees, and to punish for disobedience, has been frequently enforced.

[10] In *Kilbourn* v. *Thompson*, 103 U.S. 168, 189, this Court said that the history of investigations by Parliament was not relevant to Congress' powers since Parliament had both judicial

investigative committees authorized to send for persons and papers, and this practice was followed in numerous congressional investigations beginning as early as 1792. Landis, *supra*, pp. 168–191. Since the Civil War, moreover, Congress has increasingly relied on investigations using compulsory process to determine whether and how it should legislate.

Until comparatively recently, the courts rarely ruled on the power of Congress to investigate, for the power was seldom challenged. See Landis, *supra*, p. 212." But the early case of *Kilbourn* v. *Thompson*, 103 U.S. 168, did impose an important limitation. There, a witness was arrested by the House for refusing to answer questions asked by a committee that was investigating a bankruptcy which had resulted in losses to numerous creditors, including the United States. This Court did not find it necessary to decide whether Congress had investigatory powers as part of its legislative function, for it held that the investigation was not into the administration of the government or into the need for new legislation, but rather into the "private affairs of individuals." P. 195.

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and legislative powers and its investigations were carried out under the former power. However, Professor Landis has shown that, by the time Parliament conducted investigations, it had only legislative powers, and that therefore Congress' power can be traced back directly to the practices of Parliament. This view was accepted by this Court in *McGrain* v. *Daugherty*, 273 U.S. 135, 161.

[11] As early as 1821, however, in *Anderson* v. *Dunn*, 6 Wheat. 204, this Court sustained the power of the Speaker of the House to convict a person for attempting to bribe a member. The Court held that this power was necessarily implied in order for the legislative power to operate (pp. 226–227).

This subject was already before a federal court in a bankruptcy proceeding, and the Court held that Congress had no judicial power to conduct a similar proceeding.

Kilbourn v. *Thompson* thus established the eminently sound principle that the power of Congress is not to prosecute, expose, or put on trial. But nothing in that decision cast doubt upon the power of Congress to investigate where it had a proper legislative purpose.[12] The later decisions confirm the power and emphasize its breadth. *In re Chapman*, 166 U.S. 661, sustained the power of a Senate committee to require a witness to testify concerning allegedly corrupt influences attempted to be exerted during the Senate's consideration of a tariff bill, and also upheld the constitutionality of Section 102 of the Revised Statute (the predecessor of the statute (2 U.S.C. 192) under which petitioner was convicted), which gave the federal district courts power to punish for contempt of Congress. The Court stated that a house of Congress could investigate any matter within its jurisdiction. Pp. 667, 671.

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[12] Insofar as *Kilbourn* may suggest a strict and unfriendly interpretation of the purpose of a congressional investigation or a niggardly view of the constitutional power to investigate, we submit that this decision is no longer authoritative. This Court in *United States* v. *Rumely*, 345 U.S. 41, 46, characterized *Kilbourn* v. *Thompson* as having included "loose language," as having been subjected to "weighty criticism," and as having been eroded by the later decisions in *McGrain* v. *Daugherty*, 273 U.S. 135, and *Sinclair* v. *United States*, 279 U.S. 263. See, also, Landis, *supra*, pp. 214–220.

In *McGrain* v. *Daugherty*, 273 U.S. 135, the Court expanded on this theme, holding upon an extensive consideration of policy and authority that a house of Congress has the power to compel witnesses before one of its committees to give testimony needed to legislate, and to punish the witness for contempt if he refuses to comply."[13] Relying on the history of investigations by Parliament, the colonial and State legislatures and Congress itself, statutes enacted by Congress, and numerous decisions by State courts (pp. 161-168, 174) the Court stated that "[i]n actual legislative practice power to secure needed information by [investigation] has long been treated as an attribute of the power to legislate" (p. 161) and that "the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function" (p. 174)."[14] In response to an argument

[13] The facts there were that the Senate was holding a witness in custody, pending trial before the Senate itself, for refusing to appear before a committee investigating the administration of the Department of Justice.

[14] As the Court explained (p. 175):

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed was treated as inhering in it.

that the purpose of the investigation was not in aid of legislation, the Court answered that "the subject was one on which legislation could be had" and that, in the absence of contrary evidence, "the presumption should be indulged that this was the real object." Pp. 177, 178. It quoted with approval (p. 178), the statement of the New York Court of Appeals (*People* v. *Keeler*, 99 N.Y. 463, 487) that "[w]e are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed * * *."

In *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, the Court applied the same fundamental pinciples to an investigation of corruption in a Senate election, saying that "if judicial interference can be successfully invoked it can only be upon a showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law." P. 620. See, also, *Jurney* v. *MacCracken*, 294 U.S. 125. And in *Tenney* v. *Brandhove*, 341 U.S. 367, the Court stated that "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." P. 378. See, also, *Sinclair* v. *United States*, 279 U.S. 263; *Hutcheson* v. *United States*, 369 U.S. 599, 618.[15]

[15] In *United States* v. *Rumely*, 345 U.S. 41, the Court reversed a conviction for contempt on the ground that the resolution which authorized the committee to investigate lobbying activities did not encompass an investigation of efforts to influence the public generally. The Court construed the resolution narrowly to avoid a serious issue under the First Amend-

It remains only to observe that, in a democracy, the power of Congress to conduct investigations to compel the attendance of witnesses and the production of papers, and to punish disobedience as contempt, arise out of necessity and are inherent in the legislative process. As Professor Landis wrote (*supra*, pp. 209–210):

> Little need be said of the necessity for investigation where new problems are faced by Congress to be met with different devices for legal control. To deny Congress power to acquaint itself with facts is equivalent to requiring it to prescribe remedies in darkness. The use of committees for such purposes is, perhaps, most common. In 1892 the activities of the Pinkerton Detective Agency as strike breakers in the railroad troubles in the West caused investigations to be conducted by both Senate and House. Such investigations have left major imprints upon legislation. The Court of Customs Appeals owes its origin thereto; restrictions upon the immigration of foreign contract labor followed upon the work of a House committee in 1889; the Transportation Act of 1920 followed in part the recommendations of the joint subcommittee of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce, appointed by the Act of July 21, 1916. Whether existing legislation protects competing interests, whether governmental con-

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ment, but did not resolve this issue. Of course, the First Amendment issue in *Rumely* did not involve the question whether Congress can constitutionally investigate Communist activities, the issue here.

trol should penetrate still further into fields of private endeavor, whether conditions are critical enough to demand legislative interposition—answers to such problems require knowledge. For its attainment Congress has appointed committees authorized to inquire and to demand all necessary information; it cannot escape in the future from employing the same device.

While the power to investigate is broad, its lawful exercise depends upon the existence of a valid legislative purpose (*Kilbourn*). We must accordingly consider whether Communist Party activities—specifically in the labor field—can be a permissible subject of congressional legislation. Plainly, as next we show, they can be.

2. Legislation Safeguarding the National Security Against Subversive Activities of the Communist Party in General—and Such Activities in the Labor Movement in Particular—Is a Proper Subject of Congressional Consideration

In Section 2 of the Subversive Activities Control Act of 1950 (50 U.S.C. 781), Congress, on the basis of detailed investigations, found that there exists an international Communist movement, foreign controlled, whose purpose is to establish totalitarian Communist dictatorship by whatever means necessary throughout the world and which in furtherance of these purposes establishes in non-Communist countries organizations, dominated from abroad, that endeavor to bring about the overthrow of existing governments, by force if need be. In Section 2 of the Communist Control Act of 1954 (50 U.S.C. 841) Congress found and declared:

> that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * * [T]he policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement.

Surely, it is not to be thought that Congress has no power whatsoever to enact legislation designed to prevent such a movement from infiltrating important areas of national life as part of a program to overthrow the government by force and violence. Appropriate measures designed to prevent a foreign-dominated conspiracy from overthrowing the government by such means are an exercise not only of inherent sovereign power but of the congressional duty to provide for the common defense. Accordingly, this Court has repeatedly upheld legislation predicated upon the view that the activities of the Communist Party endanger the security of the United States and are therefore a proper subject of congressional regulation. Some of the cases have evoked differences of opinion within the Court, but none of the opinions, whether for the Court or in concurrence or dissent, suggests that the activities of the Communist Party are immune from legislation. Nor is any such suggestion to be found in those decisions that have invalidated portions of such legislation.

In *American Communications Association* v. *Douds*, 339 U.S. 382, the Court had before it Section 9(h) of the National Labor Relations Act, which barred from

using the facilities of the National Labor Relations Board any union whose officers had not filed non-Communist affidavits. In sustaining Section 9(h)[16] the Court squarely held that Communist activity in the labor movement is a fit subject of congressional concern. Mr. Justice Jackson's concurring opinion succinctly summarized the reasons for distinguishing the Communist Party from true political parties. "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." P. 424. Its goal is *"to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"* (p. 425; emphasis in original); *"Violent and undemocratic means are the calculated and indispensable methods to attain* [this] *goal"* (p. 429; emphasis in original). It is "a secret conclave. Members are admitted only upon acceptance as reli-

[16] In *United States* v. *Brown*, 381 U.S. 437, a successor provision to 9(h) (Section 504 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504), which made it a criminal offense for anyone who is (or, within the preceding five years, was) a member of the Communist Party to serve as an officer of any labor organization was held to be an unconstitutional bill of attainder. In *Dennis* v. *United States*, No. 502, October Term, 1965, pending on writ of certiorari, petitioner has asked that *Douds* be overruled on the authority of *Brown*. In neither case is there any issue, however, as to the basic power of Congress to regulate Communist activities by appropriate legislation.

able and after indoctrination in its policies, to which the member is fully committed." P. 432. Each member "pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded." *Ibid.* It, moreover, "*alone among American parties past or present is dominated and controlled by a foreign government.* It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands" (p. 427; emphasis in original).

The next case was *Dennis* v. *United States*, 341 U.S. 494, where the Court upheld the constitutionality, as applied to officers of the Communist Party, of the provisions of the Smith Act making it a crime for any person knowingly or willfully to advocate the overthrow of the government of the United States by force or violence or to organize any group which so advocates or to conspire so to advocate.

In *Carlson* v. *Landon*, 342 U.S. 524, the Court sustained the constitutionality of a provision of the Immigration Act allowing the Attorney General in his discretion to hold in custody without bail, pending determination of their deportability, aliens who are members of the Communist Party. The Court stated that "[w]e have no doubt that the doctrines and practices of Communism clearly enough teach the use of force to achieve political control to give constitutional basis, according to any theory of reasonableness or as

bitrariness, for Congress to expel known alien Communists * * *." Pp. 535–536. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, held that the provision of the Alien Registration Act of 1940 authorizing deportation of aliens because of membership in the Communist Party was constitutional, even as applied to aliens whose membership had ended before passage of the Act. In an opinion by Mr. Justice Jackson, the Court held that due process was not denied, partly because "Congress received evidence that the Communist movement here has been heavily laden with aliens and that Soviet control of the American Communist Party has been largely through alien Communists." P. 590. In *Galvan* v. *Press*, 347 U.S. 522, the Court held that the provision of the Internal Security Act of 1950 for the deportation of any alien who has been a member of the Communist Party after entry was constitutional even as applied to an alien who had no knowledge that the Party advocated overthrow of the government. In *Flemming* v. *Nestor*, 363 U.S. 603, the Court upheld a provision of the Social Security Act terminating old-age benefits for aliens deported for membership in the Communist Party. *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, sustained the constitutionality of the registration provisions of the Internal Security Act of 1950 concerning "Communist action organizations" against attack under the First Amendment and other provisions of the Constitution; the Court's holding was specifically based on congressional investigations like that involved here, and on the findings concerning the Communist Party which resulted from such investiga-

tions. Pp. 96–97, 102. And in *Scales* v. *United States*, 367 U.S. 203, 228–230, the Court upheld the membership clause of the Smith Act.[17]

Recent decisions invalidating some provisions of congressional legislation dealing with subversive activities leave undisturbed the fundamental premise that Congress has power to regulate such activities by appropriate means. In *Aptheker* v. *Secretary of State*, 378 U.S. 500, the Court invalidated the passport provision of the Subversive Activities Control Act of 1950 (Section 6, 50 U.S.C. 785), on the ground that it too broadly and indiscriminately curtailed free-

[17] This Court has also upheld State power in relation to Communist activities. In *Gerende* v. *Board of Supervisors*, 341 U.S. 56, the Court held unanimously that Maryland could require every candidate on the ballot to swear in an affidavit that he was not engaged in any attempt to overthrow the government by force and violence. In *Garner* v. *Board of Public Works*, 341 U.S. 716, the Court held that a city has power to require its employees to execute affidavits disclosing whether they were or had ever been members of the Communist Party. *Adler* v. *Board of Education*, 342 U.S. 485, similarly determined that a New York statute which makes any member of an organization advocating the overthrow of the government by force or violence ineligible for employment in the public schools was constitutional. In *Beilan* v. *Board of Public Education*, 357 U.S. 399, and *Lerner* v. *Casey*, 357 U.S. 468, the Court found that State officials could question employees about their Communist affiliations and discharge them if they refused to answer. And in *Konigsberg* v. *State Bar*, 366 U.S. 36, and *In re Anastaplo*, 366 U.S. 82, this Court held that a State could constitutionally deny admission to the Bar to applicants who refused to answer questions pertaining to membership in the Communist Party. Mr. Justice Harlan said that "[t]his Court has long since recognized the legitimacy of a statutory finding that membership in the Communist Party is not unrelated to the danger of use for such illegal ends of power given for limited purposes." 366 U.S., p. 52.

dom to travel, but the Court left no doubt of Congress' power—which it termed "obvious and unarguable" (p. 509)—to "safeguard our Nation's security" (*ibid.*) by more carefully tailored legislation (see pp. 512–513). In *United States* v. *Brown*, 381 U.S. 437 (which, as noted earlier (p. 31, n. 16, *supra*), invalidated a provision of the Labor Management Reporting and Disclosure Act forbidding members of the Communist Party to hold union office), this Court did not question the constitutional power of Congress to regulate Communist or subversive activities; it held only that in doing so Congress could not, without violating the constitutional proscription against bills of attainder, "specify the people upon whom the sanction it prescribes is to be levied," but "must accomplish such results by rules of general applicability." P. 461. And in *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70, the Court, again without disturbing either the principle of congressional power to regulate subversive activities or its earlier decision in *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (see p. 33, *supra*), held merely that a member of the Party could not, consistently with his Fifth Amendment right against compulsory self-incrimination, be compelled to register with the Attorney General.

Thus, the unbroken course of the relevant decisions of this Court sustains the power of Congress to enact appropriate legislation controlling Communist activities. That Communist infiltration of labor unions—the subject of inquiry by Congress in this case—is a proper subject of such legislation is also, we think,

established. Congress has long had evidence of the dangers posed and the disruptive tactics employed by Communists in seeking to gain control of labor unions with a view to using the resulting power for conspiratorial ends. The Court summarized the evidence available in 1947 in *American Communications Association* v. *Douds*, 339 U.S. 382, 388–389:

> Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. * * *
>
> No useful purpose would be served by setting out at length the evidence before Congress relating to the problem of political strikes, nor can we attempt to assess the validity of each item of evidence. It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action.

And see, also p. 53, *infra*.

2. An Investigation of Communist Infiltration of Labor Unions Is, Therefore, Within Congress' Power

Since Congress has undoubted power to investigate in areas where appropriate legislation would be constitutionally permissible, the investigation that gave rise to the citation of petitioner for contempt could be considered beyond the power of Congress only if no legislation upon the subject of Communist activities in the labor movement could be devised that Congress had power to enact. That is surely an untenable proposition.[18] The congressional legislation and judicial opinions reviewed in the preceding section demonstrate that there was a reasonable foundation for believing in 1955 that the activities the House Committee on Un-American Activities was investigating might be found disruptive of labor conditions and warrant appropriate legislative correction, and there is no occasion to reconsider here the correctness of the conclusions reached by Congress upon the evidence available. The power of Congress to investigate cannot depend upon its ability to prove in advance the answer to the very question to be investigated. It is surely enough that Congress in 1955 had cause to believe that there might be a condition calling for appropriate legislation—for the very purpose of the investigation is to ascertain whether the condition

[18] Particular provisions of such legislation may, of course, run afoul of specific constitutional prohibitions. See p. 35, and n. 16, p. 31, *supra*. Our point is that there is no basis to suppose that *no* such legislation could be devised that would be appropriate and permissible, as might be the case, for example, with legislation regulating religious beliefs.

in fact exists. Again we emphasize that if Congress can legislate concerning Communist activities generally, and in the labor field in particular, *a fortiori* it can conduct investigations upon which to base such legislation.

B. THE PURPOSE OF THE QUESTIONING OF PETITIONER WAS TO ELICIT INFORMATION RELEVANT TO A VALID SUBJECT OF LEGISLATION—RATHER THAN TO EXPOSE HIM FOR THE SAKE OF EXPOSURE ALONE

The discussion just concluded advances the general proposition that the investigation of Communist activities—specifically the kind of investigation at issue here, conducted by the Committee on Un-American Activities in the labor field in 1955—is within the scope of the legislative powers granted Congress by the Constitution. We grant, however, that a particular congressional hearing or course of questioning might conceivably lack a valid legislative purpose, being designed not to elicit relevant information but to expose or punish individual witnesses—and that, in that event, a citation for contempt based on a witness's refusal to answer questions put to him by the investigating committee would be invalid. In *Kilbourn* v. *Thompson*, 103 U.S. 168, 195, as we saw, this Court held the use of compulsory process to elicit testimony in a congressional investigation and the subsequent citation for contempt invalid because the investigation was judicial in nature and "could result in no valid legislation on the subject to which the inquiry referred," and in *Watkins* v. *United States*, 354 U.S. 178, 200, the Court said:

> We have no doubt that there is no congressional power to expose for the sake of exposure

> The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

This injunction has been repeated in later cases. *E.g.*, *Hutcheson* v. *United States*, 369 U.S. 599, 614. We accept it. It was not, however, violated in the present case.

1. The subject Congress was investigating—Communist infiltration of labor unions—not only is within the area of possible legislation (see pp. 29–36, *supra*); it has also been the subject of several enactments; and this, we think, demonstrates Congress' *bona fide* legislative concern. In 1947, the Labor Management Relations Act inserted Section 9(h) into the National Labor Relations Act, closing the facilities of the National Labor Relations Board to unions whose officers had not filed non-Communist affidavits. See *American Communications Association* v. *Douds*, 339 U.S. 382. After twelve years of experience, Congress deleted this provision and, in Section 504 of the Labor Management Reporting and Disclosure Act, made it a crime for a member of the Communist Party to hold union office. 73 Stat. 536, 29 U.S.C. 504. In addition, the Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, deals extensively with unions found to be Communist fronts or Communist-infiltrated. Act of September 23, 1950, 64 Sat. 987, 998, as amended by Act of August 24, 1954, § 10, 68 Stat. 778, 50 U.S.C. 792a. It is patent, therefore, that Congress has been concerned with

legislating in this field, and not merely exposing witnesses.

At the time of the issuance of the subpoena to petitioner, the House Un-American Activities Committee had reason to believe that petitioner would have valuable and pertinent information concerning Communist infiltration of labor organizations. The Committee had been informed that petitioner was a general vice-president of the United Electrical, Radio, and Machine Workers of America, and president of District No. 9 of the union; it had received sworn testimony in 1951 from a long-time district president of the union that almost all of its important officials were Communist Party members; and a former Communist Party member, who had been an organizer for the U.E., had testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party. (See Statement, *supra*, pp. 4–5.) That eliciting from petitioner pertinent information concerning Communist activities in labor unions was the true object of the Committee's questioning of petitioner is manifest from the opening statement of the Chairman, from the course of the questioning of petitioner and prior witnesses, and from the explanations made to petitioner during the hearings. (See Statement, *supra*, pp. 7–14, and pp. 59–64, *infra*.[19])

[19] We consider the circumstances of petitioner's questioning at greater length, *infra*, pp. 59–64, in discussing petitioner's claim that the questioning infringed his First Amendment rights of belief and association. We are concerned here only with the issue whether petitioner established that such questioning lacked any *bona fide* legislative purpose.

In these circumstances—a congressional inquiry into a subject of demonstrated legislative concern and the witness in a position to give highly relevant information—one could conclude that the Committee was abusing its powers only by challenging the motives of its members. This Court has consistently refused to embark upon such an inquiry. It is "not our function," the Chief Justice said in *Watkins*, to engage "in testing the motives of committee members. * * * Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served." 354 U.S., p. 200. Accord, *Barenblatt* v. *United States*, 360 U.S. 109, 132; *Wilkinson* v. *United States*, 365 U.S. 399, 412. This rule is not new or confined to congressional investigations. As long ago as *McCray* v. *United States*, 195 U.S. 27, 55, it was held that there is no authority in the judiciary to restrain a lawful exercise of power by another department of the government because a wrong motive or purpose has impelled the exercise of the power. See, also, *Arizona* v. *California*, 283 U.S. 423, 455. Accordingly, we submit, once a valid legislative purpose for the particular inquiry is shown—as was done here—any further consideration of the legislators' motives or intentions is improper. But, at all events (as now we show), the record of these proceedings refutes any claim that there were improper motives—"union busting" and the like—in this case.[20]

[20] Insofar as petitioner's claim of improper legislative purpose is based on statements of the Chairman of the Committee and its employees, what petitioner alleges to be the Committee's

2. On February 9, 1955, the Committee announced that hearings would be held in Fort Wayne, Indiana.[21] At that time, neither the Chairman of the Committee, nor the members of the subcommittee, nor Committee counsel had any knowledge that an N.L.R.B. election was scheduled to be held at the Magnavox plant in Fort Wayne on February 24, 1955 (R. 94, 116, 123-124). Nevertheless, petitioner sent the Chairman a highly abusive telegram (R. 125–127) (which he received on February 10, 1955) stating that, in view of the scheduled election and in view of what was described in the telegram as the criminal conviction of former Committee Chairman Thomas for "bribery," petitioner had every right to ask whether the Committee had been bribed by management to help it in "union busting." On February 14, 1955, George Goldstein, Washington representative of the U.E., sought a continuance of the hearing until after the union election at Magnavox, and was granted an interview with the Committee. Petitioner suggests (Br. 63–64) that the discussion which developed dur-

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methods of operation, and that the Committee's investigations generally are conducted for the purpose of exposure, not legislation, this Court has twice rejected, in *Barenblatt*, *supra*, and in *Watkins*, *supra*, such a claim based on identical evidence. Compare R. 195–254 with the Record, pp. 77, 262, 265–266 and petitioner's brief in *Barenblatt*, No. 35, Oct. Term, 1958, and the Record, pp. 11–16, 58–64 and 93–168 and petitioner's brief in *Watkins*, No. 261, Oct. Term, 1956.

[21] The Committee counsel testified that no newspaper release was prepared by the Committee (R. 94). Similarly, there is no basis in the record for petitioner's claim (Br. 63) that the Committee Chairman notified local newspapers of Committee actions.

ing the interview shows that the Commitee was not acting in furtherance of a genuine legislative purpose. We disagree. The material portions of the interview are as follows (R. 116):

> Chairman WALTER. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.
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> * * * * *
>
> Chairman WALTER. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Commenting on this colloquy, the court below on the first appeal stated (280 F. 2d at 68?):

> [I]t can be gleaned that Mr. Walter showed some displeasure which, under the circumstances, and having in mind the abusive and insulting telegram * * * can be understood and as readily be excused. Congressmen are more fortunate than judges in at least this respect, that when attacked unjustly, they are at liberty

to defend themselves and to express themselves forcefully and vigorously."

While a continuance of the scheduled hearing was at first denied (R. 15), it was later granted and the hearing was set for February 28 (R. 15–16). The hearing opened on that day with an announcement by the Chairman of the subcommittee that the subject of the inquiry was "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda" (Statement, *supra*, p. 8). The questions asked petitioner showed clearly that the Committee was conducting an investigation of Communist infiltration in the labor field. No member of the Committee, or its counsel, indicated that the Committee was engaged in "union busting" or was attempting merely to expose petitioner. On the contrary, they repeatedly stated that the subcommittee was seeking information on Communist activities. Congressman Doyle stated four times that the purpose of the hearings was to obtain information on Communist infiltration and control of labor unions (Statement, *supra*, pp. 9–14, and n. 42, p. 70, *infra*).[22]

[22] Petitioner points (Br. 8, 64) to testimony of a newspaper reporter who wrote a story to the effect that at the meeting of February 14, 1955, the "House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union" (R. 407). The reporter admitted, however, the accuracy of the stenographically reported conference between Mr. Walter and Mr. Goldstein on February 14, although he thought something more was said by Mr. Walter or another representative of the Committee (R. 119, 123).

[23] For similar statements to the other witnesses called, see R.

To rebut such evidence that the Committee was pursuing a valid legislative purpose, petitioner relies almost entirely on newspaper stories (Br. 62–65). But in *Watkins* and *Barenblatt, supra*, this Court held that a defendant may not challenge the motives of Committee members on the basis of their official statements on the floor of Congress, at committee hearings, and in committee reports; *a fortiori*, he cannot do so on the basis of unofficial statements made to the press. At all events, the newspaper stories are unpersuasive bits-and-pieces that cannot outweigh the proof of valid legislative purpose contained in the transcript of the hearing itself.

3. It is true that "exposure" of petitioner, as well as other individuals, resulted to some extent from the hearings. But such exposure is an inevitable by-product of virtually any congressional investigation into secret activities. Cf. *Uphaus* v. *Wyman*, 360 U.S. 72, 71; *DeGregory* v. *New Hamsphire*, No. 396, this Term, decided April 4, 1966. If exposure resulting from such an investigation is automatically to be

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221–222, 225, 232. For example, Congressman Doyle stated to a prior witness, Lawrence Cover, (R. 232):

> Mr. DOYLE. May I state this, that so far as I know, we in the committee have had no notice and no knowledge of any oncoming elections back in your area at the time the meeting was set. I was present, happened to be, when the date was set for the hearing to have occurred recently, but this hearing before your union or down in your area was a matter that we had planned last year, many months ago. Because of workloads we didn't get to it. So at the first meeting of our group a couple of weeks ago we included the trip to your area as one of the places where we should promptly go to clean up what was hanging over from last year.

deemed exposure "for the sake of exposure" and thus proof that the investigation did not have a valid legislative purpose, no such investigations would be permissible. Yet, exposure of problem areas is one of the preliminary steps to remedial legislation, and, obviously, the identity and activities of particular individuals may be a vital part of the problem. As the Court of Appeals for the District of Columbia Circuit noted in *Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843:

> If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. * * * [24]

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[24] Accord, *Morford* v. *United States*, 176 F. 2d 54, 57 (C.A.D.C.), reversed on other grounds, 339 U.S. 258. See, also, *McPhaul* v. *United States*, 364 U.S. 372; *United States* v. *Bryan*, 339 U.S. 323; *United States* v. *Fleischman*, 339 U.S. 349. In *McPhaul*, this Court observed with regard to the pertinency of records subpoenaed from the "Civil Rights Congress" (p. 381):

> It would seem clear enough that the auspices under which the Civil Rights Congress was organized, the identity and extent of its affiliations, the source of its funds and to whom distributed would be prime considerations in determining whether the organization was being used by the Communists in the Detroit area. If the Civil Rights Congress was affiliated with known Communist organizations, or if its funds were received from such organizations or were used to support Communist activities in the Detroit area, those facts, it is reasonable to suppose, would be shown by the records called

Similarly it was of obvious importance to this investigation of Communist activities in labor unions, and particularly the U.E., to determine what officers of the union were Communist Party members. Such information would show the extent to which the unions were Communist-controlled and therefore the need, or lack of need, for legislation.

On the basis of the evidence introduced at petitioner's trial showing the Committee's sustained legislative purpose, the district court found (R. 206–207)

> that the purpose of the Subcommittee (as stated at the inception of the hearings and again stated on many occasions during the hearings and further indicated by the disclaimers of any other purpose) was not exposure of the defendant, but the ascertainment of the extent of Communist Party infiltration into labor. * * *

After reviewing the same evidence, the court of appeals on the first appeal stated that "[t]he record clearly demonstrates that the Committee hearing was one constituting a continued investigation which the Committee was conducting into Communist activities in the labor field, including infiltration into labor organizations and Communist propaganda" (280 F. 2d, p. 681). Upon a thorough review of the record (see pp. 681–685), the court concluded (p. 685):

> Exposure no doubt resulted from the inquiry. But no one can fairly read the record without perceiving that the dominant purpose of the

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for by the subpoena, and those facts would be highly pertinent to the Subcommittee's inquiry [into Communist activity in the Detroit area].

Committee was a legislative one, namely, to learn the extent of Communist infiltration or domination of labor unions. * * *

We submit that these holdings are fully supported by the evidence.

C. REQUIRING PETITIONER TO TESTIFY DID NOT CONSTITUTE A BILL OF ATTAINDER NOR IS THE COMMITTEE'S AUTHORIZING RESOLUTION UNCONSTITUTIONALLY VAGUE

We turn now to two contentions made by petitioner that stem directly from his argument that his questioning by the Committee on Un-American Activities was devoid of a valid legislative purpose and designed solely to expose him for the sake of exposure (Br. 51–69, 87–91, 96–118).[25] The premise of both contentions is that exposure for exposure's sake was, in fact, the dominant purpose of the inquiry. Since (as we have just shown) this premise is false, the contentions fail.

1. A bill of attainder is a statute which, instead of regulating in general terms, applies a sanction or deprivation to named or specified persons, thereby invading the province of the judiciary; such laws are expressly forbidden by Article I, Section 9 of the Constitution. *Cummings* v. *Missouri*, 4 Wall. 277, 323; *United States* v. *Lovett*, 328 U.S. 303, 315–317; *United States* v. *Brown*, 381 U.S. 437. However, we know of no case in which the public presentation of facts concerning an individual—exposure—has been regarded as an attaint. And, even assuming that a deliberate congressional attempt to expose an individ-

[25] We deal with these contentions briefly since, as presented by petitioner, they are substantially interchangeable with the "exposure for exposure's sake" argument dealt with above.

ual for the sake of exposure unrelated to a *bona fide* legislative purpose could amount to a bill of attainder, petitioner apparently does not contend that a congressional hearing would violate the prohibition against such laws in circumstances where exposure was merely the byproduct of a *bona fide* investigation into a subject which the Legislature was empowered to consider. Yet such, we have seen (pp. 38–48, *supra*), were precisely the circumstances here.

2. Petitioner's contention that the authorizing resolution of the Un-American Activities Committee (Rule XI of the Rules of the House of Representatives, p. 90, n. 58, *infra*) is unconstitutionally vague is similarly without merit.[*] Rule XI authorizes the Committee to make investigations of "un-American propaganda activities" and "subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution." Petitioner's complaint is that this mandate is so vague and broad that it permits the Committee to make investigations whose sole objects are exposing for exposure's sake, "union busting," deterring the exercise of freedom of speech and of association, and other purposes not genuinely legislative. Not only is the premise of this argument—that the Committee's investigations lack a valid legislative purpose—false; in addition, the argument rests

[*] The identical contention was expressly rejected in *Barenblatt*, 360 U.S., pp. 116–117. See, also, *Wilkinson*, 365 U.S., pp. 407–408.

upon a misreading of the applicable decisions of this Court.

It is true, of course, that the "standards of permissible statutory vagueness are strict in the area of free expression." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432; see, *e.g.*, *Smith* v. *California*, 361 U.S. 147, 151. And it follows that a penal or prohibitory statute or decree so broad or indefinite that it might deter the exercise of constitutionally protected rights of expression is invalid. *N.A.A.C.P.* v. *Button*, 371 U.S., pp. 432–433, and cases cited. But there is no such danger here, even granting that Rule XI may be rather vague and general in its terms (see *Watkins* v. *United States*, 354 U.S. 178, 202). The statute prohibits nothing; it is merely an authorizing resolution. Since it lacks any prohibitory effect or penal sanction, we do not see how the generality of its language could prejudice or deter anyone. No person can be compelled to testify or cited for contempt of Congress and convicted under 2 U.S.C. 192 for refusal to testify unless he willfully refuses to answer questions that are pertinent to a subject under inquiry by, and within the legislative competence of, Congress; that was the case here (see pp. 29–41, *supra*, and pp. 59–64, *infra*).

In addition, it is apparent that petitioner's complaint goes not to the wording of Rule XI, but to the scope of the Committee's investigations and its alleged improper extra-legislative purposes of exposure and condemnation. Since the Committee's investigations—and specifically that at which petitioner was questioned—in fact do have a valid legislative

purpose, under petitioner's own reasoning any argument based on vagueness (or on the Bill of Attainder Clause) is foreclosed.

To complete this part of our argument, it remains only to consider whether the investigation constituted an invasion of petitioner's First Amendment rights—a question to which we now turn.

D. COMPELLING DISCLOSURE OF COMMUNIST PARTY ACTIVITIES IN THE CIRCUMSTANCES OF THIS CASE DOES NOT INVADE THE FREEDOMS OF BELIEF AND ASSOCIATION SAFEGUARDED BY THE FIRST AMENDMENT

In exercising its broad powers of investigation Congress, of course, is subject to the restrictions imposed by the Bill of Rights upon all federal governmental activity. The Fifth Amendment privilege against self-incrimination has been frequently invoked and recognized. *E.g., Quinn* v. *United States*, 349 U.S. 155. In addition, "an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. * * * The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." *Watkins* v. *United States*, 354 U.S. 178, 197. But here, as in *Barenblatt* v. *United States*, 360 U.S. 109; *Uphaus* v. *Wyman*, 360 U.S. 72; *Wilkinson* v. *United States*, 365 U.S. 399; and *Braden* v. *United States*, 365 U.S. 431, the Committee violated no rights guaranteed by the First Amendment.

Initially, we note that petitioner is not complaining of a "law" but of compulsion to answer questions. Nor is he complaining that Congress has directly abridged his right to speak or punished him for its

exercise, since, had he answered the Committee's questions, he would have remained as free as ever from any form of legal restriction upon political activities or other forms of expression. His complaint, rather, is that the disclosure of views and activities that are unorthodox or unpopular may subject him (and others whom he names) to public obloquy, thus discouraging them and others from adhering to unpopular views lest they suffer such a fate in the future. Obviously, it requires something more than a literal reading of the First Amendment to hold that such collateral consequences raise a constitutional question. Moreover, whatever may be the merits of a "balancing test" when dealing with a law that itself directly abridges freedom of speech or the press, questions of judgment and degree surely must be faced in dealing with governmental activity that affects freedom of expression only indirectly. As the Chief Justice said in *Watkins* (p. 198):

> It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. * * * The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from any unwilling witness.

And in *Barenblatt* v. *United States*, 360 U.S. 109, 126-127, the Court held:

> Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public in-

terests at stake in the particular circumstances shown.

Applying this standard to the present case, we think it is clear that petitioner's First Amendment rights were not invaded.

1. The public interest to be served by petitioner's testimony was the need for information concerning subversive activities in a vital area in our national life—labor relations—information that would be helpful not only in reviewing the effectiveness of existing legislation but also in determining what new legislation might be needed to meet existing or threatened evils. The hearing at which petitioner was questioned was conducted for the explicit purpose of securing information about "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda" (R. 219). These are plainly matters of serious national concern; the reality of these dangers and the disruptive effects of Communist influence in labor unions are shown by industrial history. We have already adverted to the mass of material available in 1947 showing Communist infiltration of labor organizations not to support and further trade union objectives but to make them a device for disrupting commerce and industry whenever the dictates of political policy might so require (see p. 36, *supra*). For example, in 1949 and 1950, the Congress of Industrial Organizations found it necessary to expel eleven international unions, including petitioner's, because of

Communist domination.[37] The labor movement's alertness to its responsibilities suggests that such problems can often be better solved without legal intervention, but the possibility of a legislator's reaching that conclusion falls far short of demonstrating that the evil does not merit legislative consideration.[38]

The special problems posed by Communist activity in the labor movement make the public interest in this investigation particularly strong for upholding the exercise of congressional power. And, besides the potential impact upon the labor movement, the same general public interest present in the *Barenblatt*, *Wilkinson*, and *Braden* cases—the right of self-preservation—is present here. In *Barenblatt*, the

[37] The committee which recommended expulsion of the United Mine, Mill and Smelter Workers Union stated (*Official Report on the Expulsion of Communist Dominated Organizations from the CIO*, compiled by the Publicity Department, CIO, Sept. 1954), p. 13):

> The Communist Party is precisely this type of organization which the CIO is under a constitutional mandate to oppose—one which would use power to exploit the people for the benefit of an alien loyalty. The Communist Party speaks in the words of unionism and Americanism. But actually it matters not to the Communist Party whether a particular policy will advance or hinder the best interests of American labor. The sole test is whether the policy is required by the need of the Soviet Union. Only to the extent that the Soviet line permits will the propaganda mill of the Communist Party grind out platforms which are in consonance with the ideals of American labor. In event of conflict, however, between the needs of the Soviet Union and the best interests of American labor, the former must always prevail.

[38] We have already pointed out that Congress chose to enact legislation in 1947, 1954, and 1959 aimed at reducing Communist influence in labor unions. See p. 39, *supra*.

Court sustained against attack under the First Amendment the interrogation of a witness concerning Communist activities in the field of education, saying (360 U.S., pp. 127–128):

> That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court. * * * In the last analysis this power rests on the right of self-preservation, "the ultimate value of any society," *Dennis* v. *United States*, 341 U.S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

The weight to be assigned this public interest in acquiring knowledge of the workings of the Communist movement was emphasized in *Uphaus* v. *Wyman*, 360 U.S. 72, a case involving a witness before the Attorney General of New Hampshire, who was conducting an investigation on behalf of the State legislature. The witness was executive director of World Fellowship, an organization which ran a summer camp in New Hampshire. The witness refused to provide a list of guests of the camp, and was convicted of contempt. In upholding the conviction, the Court stated that the interest of the State was in the presence of subversives in New Hampshire; that the Attorney General "had valid reason

to believe" that there was a "nexus between World Fellowship and subversive activities" and that the speakers and guests might be subversive persons; and that this nexus was adequate to justify the investigation since the investigation was undertaken "in the interest of self-preservation" (pp. 79–80). In contrast to the strong governmental interest, the Court found that the competing interest in associational privacy was "tenuous at best," since the camp was public and was required to maintain a register open to police officers, and since the only harm—public exposure—was "an inescapable incident of an investigation into the presence of subversive persons within a State" (pp. 80–81).[*]

Subsequently, in *Wilkinson* v. *United States*, 365 U.S. 399, and *Braden* v. *United States*, 365 U.S. 431, the Court sustained like questions in the course of a

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[*] In *DeGregory* v. *New Hampshire*, No. 396, this Term, decided April 4, 1966, this Court recently upheld the claim of a witness that his refusal to answer certain questions put to him by the Attorney General of New Hampshire in another investigation of subversive activities was protected by the First and Fourteenth Amendments. Distinguishing *Uphaus*, the Court found that the questions asked DeGregory lacked sufficient connection with the State's interest in preventing subversion, in view of the fact that they related to activities six years and more before the investigation and that there was no indication that DeGregory was currently involved with any subversive organizations or activities. In *Uphaus*—as in the present case—the questions asked related to current subversive activities; and there can be no doubt, we submit, of the propriety of such questioning. Indeed, this Court affirmed an earlier conviction of DeGregory based upon his refusal to answer the question whether he was presently a member of the Communist Party. *DeGregory* v. *Attorney General*, 383 U.S. 19.

congressional inquiry into Communist propaganda, rejecting the witnesses' contentions under the First Amendment."[20] See, also, *Gibson* v. *Florida Legislative Comm.*, 372 U.S. 539, 549; p. 21, *supra*.[21]

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[20] The Court said in *Braden* (p. 435):

> But *Barenblatt* did not confine congressional committee investigation to overt criminal activity, nor did that case determine that Congress can only investigate the Communist Party itself. Rather, the decision upheld an investigation of Communist activity in education. Education, too, is legitimate and protected activity. Communist infiltration and propaganda in a given area of the country * * * are surely as much within [the subcommittee's] pervasive authority as Communist activity in educational institutions. * * * Information as to the extent to which the Communist Party was utilizing legitimate organizations and causes in its propaganda efforts in [the South] was surely not constitutionally beyond the reach of the subcommittee's inquiry. Upon the reasoning and authority of *Barenblatt*, 360 U.S. at 125–134, we hold that the judgment is not to be set aside on First Amendment grounds.

[21] The lower courts have likewise uniformly and repeatedly held that the First Amendment does not prohibit Congress from investigating Communist activities in search of information necessary in order to legislate. *E.g.*, *Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843; *Lawson* v. *United States*, 176 F. 2d 49, 52–53 (C.A. D.C.), certiorari denied, 339 U.S. 934; *United States* v. *Josephson*, 165 F. 2d 82, 90–92 (C.A. 2), certiorari denied, 333 U.S. 838; *Eisler* v. *United States*, 170 F. 2d 273 (C.A. D.C.), certiorari dismissed, 338 U.S. 883, *United States* v. *Orman*, 207 F. 2d 143, 157 (C.A. 3); *Marshall* v. *United States*, 176 F. 2d 473 (C.A. D.C.), certiorari denied, 339 U.S. 933; *Dennis* v. *United States*, 171 F. 2d 986 (C.A. D.C.), affirmed on other grounds, 339 U.S. 162; *Sacher* v. *United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576; *Townsend* v. *United States*, 95 F. 2d 352, 361 (C.A. D.C.), certiorari denied, 303 U.S. 664; *United States* v. *Lattimore*, 215 F. 2d 847, 851 (C.A. D.C.); *Morford* v. *United States*, 176 F. 2d 54, 57 (C.A. D.C.), reversed on other grounds, 339 U.S. 258;

The public interest in congressional knowledge of Communist activities is underscored by the numerous decisions of this Court based upon the premise that the dangers of Communist subversion in the particular areas involved, as found by Congress, furnished an adequate constitutional foundation for substantive legislation.[32] Upon the same premise the Court has upheld, against attack under the Fourteenth Amendment, State legislation aimed at membership in the Communist Party, requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating the overthrow of the government by force and violence.[33] The proposition that there is sufficient public danger in the activities of the Communist Party to justify legislative investigation and appropriate legislation is thus deeply embedded in our constitutional law. To hold that the First Amendment prevents mere congressional inquiry into Communist membership or activities would not only overrule *Barenblatt, Uphaus, Braden,* and *Wil-*

United States v. *Kamin*, 136 F. Supp. 791, 803 (D. Mass.); *United States* v. *Bryan*, 72 F. Supp. 58, 62 (D. D.C.), reversed on other grounds, 174 F. 2d 525 (C.A. D.C.), reversed, 339 U.S. 323.

[32] *American Communications Association* v. *Douds*, 339 U.S. 382; *Osman* v. *Douds*, 339 U.S. 846; *Carlson* v. *Landon*, 342 U.S. 524; *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Galvan* v. *Press*, 347 U.S. 522; *Flemming* v. *Nestor*, 363 U.S. 603; *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1; *Scales* v. *United States*, 367 U.S. 203.

[33] *Gerende* v. *Board of Supervisors*, 341 U.S. 56; *Garner* v. *Board of Public Works*, 341 U.S. 716. See, also, *Beilan* v. *Board of Education*, 357 U.S. 399; *Lerner* v. *Casey*, 357 U.S. 468; *Adler* v. *Board of Education*, 342 U.S. 485; *Gibson* v. *Florida Legislative Comm.*, 372 U.S. 539, 549.

inson but reject a basic premise of the consistent line of decisions beginning with *American Communications Association* v. *Douds, supra.*

2. We recognize, however, that each case must rest in a measure upon its own facts. Hence, we do not suggest that, simply because there is a sufficient interest in legislative knowledge concerning Communist activities in a particular field to justify an appropriate use of compulsory process to elicit testimony, it automatically follows that particular questioning of a particular witness is proper. Accordingly, we consider the reasons for calling petitioner in this case, the relevancy of the information he could be expected to furnish, and the potential harm to protected freedoms; and we show that in all these respects the present case is substantially stronger than *Barenblatt, Wilkinson,* or *Braden.*

We may begin by noting that not only was the Committee's inquiry in this case supported by strong considerations of public interest, as we have seen, but, in addition, there was every reason to believe that petitioner could furnish pertinent and valuable information. Petitioner was not subpoenaed as a result of "indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee." *Barenblatt* v. *United States, supra,* 360 U.S., p. 134. At the time petitioner was subpoenaed, the Committee had information that the United Electrical, Radio and Machine Workers of America had been infiltrated by the Communist Party. Indeed, the Committee had heard sworn testimony that virtually all the union's

officers were Communist (see *supra*, p. 4). Petitioner was admittedly general vice-president of the union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization (see *supra*, pp. 12–14). As an officer of a union about which the Committee had evidence of such infiltration, petitioner was in a position to provide pertinent information, either by affirming or repudiating previous testimony. And the questions that the Committee asked and that petitioner refused to answer were fairly designed to elicit such information.

An affirmative answer to the question that formed the basis of count one of the indictment—whether petitioner was a member of the Communist Party at the time of the hearings—would have helped to confirm the reports of Communist infiltration of the labor movement and show that petitioner could give further information; a negative response would have tended to show that the reports were exaggerated or inaccurate. In *Barenblatt*, three of the five questions that the witness refused to answer concerned his membership in the Communist Party [14] and this Court specifically affirmed the conviction on the ground that these three questions were proper. P. 115. In *Wilkinson*

[14] "Are you now a member of the Communist Party?"; "Have you ever been a member of the Communist Party?"; "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?" 360 U.S., p. 111.

the sole question on which the witness was convicted (and therefore the question on which this Court affirmed) was, "Are you now a member of the Communist Party?" 365 U.S., p. 407. And in *Braden*, of the six questions on which petitioner was convicted, the question on which this Court affirmed was, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" 365 U.S., p. 433, n. 2. The question involved in count one here—"Are you now a member of the Communist Party?"—is identical to the question in *Wilkinson* and virtually identical to those in *Barenblatt* and *Braden* and is in itself sufficient to sustain the conviction."

It may be argued that there was no governmental interest in questioning petitioner because the Committee already had detailed information concerning him. Although there are other answers to this argument (see pp. 63–64, *infra*), we submit that the power of a congressional committee to ask material questions in the course of an inquiry into a proper subject of legislative investigation cannot be made to depend upon a judicial determination of how helpful this Court would consider the information. The pertinency of the questions to a duly authorized subject of investigation must be clearly established. The objective must be legislation, not prosecution, adjudication, or exposure (see *supra*, pp. 38–48). We also assume *arguendo* that there must be reason to believe

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"Since petitioner was given a general sentence and fine on all counts less than the maximum permissible punishment on any one, his conviction must be upheld if any count is sustained. *Barenblatt*, p. 115.

that the witness has pertinent information. Finally, the public importance of Congress' acquiring pertinent information upon the subject under investigation must be weighed against any potential damage to liberties protected by the Bill of Rights. But once these points are covered, the judicial function is exhausted. The Court would be exercising a legislative function if it undertook to decide just how necessary—or how helpful—particular information would be. Choosing among relevant lines of inquiry, deciding when the ground has been adequately covered, relying upon testimony already received, or seeking further disproof or corroboration are all parts of the process of legislative investigation. For the Court to decide such issues would be inconsistent with the presumption of validity due to a coordinate branch of the government and violative of principles of separation of powers. See *Watkins* v. *United States*, 354 U.S. 178, 215.

This precept is as necessary in practice as it is sound in principle. No one can tell how helpful a logically material item of evidence may be in the legislative process without studying and drawing inferences from the evidence already introduced, ascertaining and appraising the other sources of information, weighing the kinds of legislation that might be drafted, and anticipating the probable response of the Senate and the House to particular evidence. A printed record supplies no basis for undertaking such a task; it can be performed only by lawmakers as part of the process of legislation.

In the present case, moreover, it is clear that the information sought to be elicited from petitioner

would have been extremely helpful to Congress. Even if the Committee had expected to receive only corroborating testimony from petitioner, there is an important governmental interest in having a well-informed witness confirm previous testimony—particularly when the existing evidence is in a controversial area and is therefore likely to be challenged. If the attempts of the Communist Party to infiltrate labor organizations were few or unsuccessful, a legislator might well conclude that the dangers did not justify the costs of legislation. If the infiltration was on a larger scale and more successful, he might reach the opposite conclusion.

Furthermore, the Committee was not only seeking evidence concerning petitioner. The question whether he was a member of the Communist Party had a direct bearing on the question of Communist infiltration of his union. That question (and the questions in counts 2 and 3 concerning petitioner's activities and relations with local officers of the Communist Party) could have provided information as to the extent of such infiltration and the methods and means employed, as well as information concerning Communist activity in the labor movement generally. The question in count four concerning the possible Party membership of another official of the union clearly fell within the same category and sought the same type of information. The questions in counts five and six concerning petitioner's possible participation in the activities of a known Communist-front organization, and the method by which his activity was solicited, had an obvious bearing upon the Committee's interest in

the dissemination of Communist propaganda. In short, the Committee had reasonable grounds to believe that petitioner could provide highly useful information on the subject of their inquiry.[36]

3. In weighing the governmental interest in obtaining information from petitioner against the competing interests that he asserts, it is relevant that petitioner is asserting a right, not to express his beliefs and engage in open political activities, but to keep them secret; and he is complaining, not of any governmental abridgment of freedom of expression and association, but of fear of the lawful reactions of those who do not share his opinions, once the truth is known. To be sure, the Consitution implicitly recognizes a fundamental right of privacy against undue governmental prying, and a measure of privacy may be essential to freedom of belief and also (in the beginning, at least) to effective political organization. See *Watkins* v. *United States*, 354 U.S. 178, 196–198. But the exact nature of the constitutional right asserted must be taken into account in weighing the governmental against the private interest—an analytical process required in this type of case (see pp. 51–53, *supra*).

It is therefore relevant to note that this is not a case of governmental interference with the political processes essential to the conduct of democratic government. Cf. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, n. 4. Nor can petitioner invoke the

[36] We repeat that petitioner's conviction must be upheld if any of the six counts is sustained, and that here, in contrast to *DeGregory* v. *New Hampshire* (see p. 56, n. 29, *supra*), the questions asked petitioner related to present—not past—subversive activities.

ultimate purpose of constitutional protection of speech "to foster peaceful interchange of all manner of thoughts, information and ideas." See *Kunz* v. *New York*, 340 U.S. 290, 295, 302 (dissenting opinion of Mr. Justice Jackson). The guarantee of freedom of expression rests ultimately upon belief in the value of free competition in ideas when openly and publicly debated. In *Whitney* v. *California*, 274 U.S. 357, 372, 375, 377, Justices Brandeis and Holmes, concurring, stated:

> Those who won our independence believed * * * that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

Petitioner is unwilling to stake his beliefs upon such a test. He was not called in reprisal for anything that he had said. His fear is of public knowledge and discussion of the information the Committee sought to elicit.

Furthermore, there is much less foundation for petitioner's claim of prejudice to fundamental freedoms than in *Barenblatt*, *Wilkinson*, and *Braden*. Barenblatt was a college teacher by profession. The investigation was into Communist infiltration in the field of education—an area of special and sensitive concern for freedom of thought and expression (cf.

Sweezy v. *New Hampshire*, 354 U.S. 234, 250, 257, 260–264)—and was necessarily concerned primarily with ideas and propaganda. In *Wilkinson* and *Braden*, the congressional inquiry was focused on Communist activities in spreading propaganda. Wilkinson was taxed at the hearings with having been sent to Atlanta, Georgia, "for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings." 365 U.S., p. 416 (dissenting opinion of Mr. Justice Black). And Braden apparently was called at least partly as a result of public letters urging opposition to measures then pending in Congress and criticizing the Un-American Activities Committee. 365 U.S., pp. 451–454 (dissenting opinion of Mr. Justice Douglas). There is no suggestion that the subpoenaing of the present petitioner had any connection with political opposition, and, surely, infiltration of labor organizations cannot be likened to political propaganda or college education.

II. THE PROCEDURES OF THE INVESTIGATING COMMITTEE IN THIS CASE WERE REGULAR AND PROPER, AND FURNISH NO GROUND FOR REVERSING PETITIONER'S CONTEMPT CONVICTION

In this part of our argument, we consider petitioner's challenge to the procedures of the Un-American Activities Committee in this case, which he contends require that his conviction for contempt of Congress be reversed.

A. THE COMMITTEE APPROVED THE INVESTIGATION OF WHICH THE HEARINGS AT WHICH PETITIONER APPEARED WERE A PART

Rule I of the Rules of Procedure of the House Committee on Un-American Activities provides in pertinent part that "[n]o major investigation shall be initiated without approval of a majority of the Committee." Admittedly, there is no direct evidence that the Committee approved the investigation of Communist activities in the field of labor of which the hearings at which petitioner was called to testify were a part.[17] But no other reasonable inference can be drawn from the evidence.

At the time of the hearings in 1955, the Committee was engaged—and had been since at least 1952—in a continuing investigation of Communist activities in the labor field. See Statement, *supra*, pp. 4–5; 280 F. 2d, p. 681. The Committee's annual reports—endorsed by all of its members—reported on this investigation in 1954 and 1955 (Appendices I and II, *infra*, pp. 93–107).[18] In 1953, moreover, the Committee had made legislative recommendations based upon the investigation which were enacted into law (Appendix I, *infra*, pp. 93–94). Hence, to hold that the investigation of Communist activities in labor was not approved by the Committee it would have to be presumed that there was no Committee approval of an

[17] We do not dispute that this investigation was a "major" one and that approval by a majority of the Committee was therefore required.

[18] We have printed as Appendices I and II to this brief excerpts from the Committee's annual reports for 1954 and 1955.

investigation continuing over a period of at least four years—an investigation on which the Committee had consistently reported and on which it had based legislative proposals. Surely, on this record, no such presumption can be indulged.

It only remains to consider whether the hearings in question were part of this approved investigation. Clearly they were. The hearings were specifically linked in the 1955 annual report to the continuing investigation of Communist activities in the labor movement (Appendix II, *infra*, p. 103). In addition, the subject matter of the hearings, the opening statement of the chairman and other statements made in the course of the hearings indicate conclusively that they were a part of that investigation. (See Statement, *supra*, pp. 7–14, and note 42, p. 70, *infra*).

B. THERE WAS A PROPER DELEGATION TO THE SUBCOMMITTEE OF AUTHORITY TO CONDUCT THE HEARINGS

Rule XI of the House of Representatives authorizes the Un-American Activities Committee to delegate authority to conduct hearings to subcommittees.[39] Pursuant thereto, the Committee by resolution of January

[39] It provides in pertinent part:

The Committee on Un-American Activities, as a whole *or by subcommittee*, is authorized to make from time to time investigations * * *.

* * * * *

For the purpose of any such investigation, the Committee on Un-American Activities, *or any subcommittee thereof*, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. * * * [Emphasis added.]

20, 1955, authorized its Chairman "to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform." (Gx 4, R. 210.) We do not understand petitioner to challenge the propriety of such resolution. Subsequently, the full Committee authorized the particular hearings at which petitioner was subpoenaed to appear and the Chairman appointed the subcommittee that took petitioner's testimony.* Additional evidence that the subcommittee was authorized is provided by the fact that the full committee reported petitioner's contempt to the House (Gx 8 (unprinted)).

We think the foregoing facts provide ample basis for concluding that the subcommittee was properly authorized to question petitioner. See *United States* v. *Seeger*, 303 F. 2d 478, 487 (C.A. 2) (concurring opinion). We know of no case where a more particularized delegation has been required. Moreover, while the formal authorizing resolution did not spell out the precise area of inquiry which the subcommittee was to explore in questioning petitioner (nor was such specification required since the subcommittee was authorized to exercise all the powers of the parent Com-

*See the minutes of the Committee meeting of February 9, 1955 (GX 5, R. 213) and the minutes of the meeting of the Committee on February 23, 1955 (GX 7, R. 215). Either Congressman Scherer, who made the underlying motion, or the secretary taking the minutes inaccurately described the subcommittee to be appointed as a "Subcommittee of the Committee on Internal Security." But it is perfectly obvious that what was being appointed was a subcommittee of the House Un-American Activities Committee.

mittee), it is clear that the subcommittee knew and adhered to the precise areas of interest of the parent Committee, and can in no sense be thought to have exceeded its delegated authority in interrogating petitioner.

The Committee desired to elicit information from petitioner concerning Communist activities in the union of which he was an officer; the subcommittee carefully sought to carry out this purpose. Thus, in his opening statement, the subcommittee's chairman carefully and fully delineated the subject under inquiry by the subcommittee as Communist activities in the labor field (see Statement, *supra*, p. 8), and each witness who appeared before the subcommittee on February 28 and March 1 (the dates of petitioner's appearance) was questioned concerning the same subject.[41] From these and other[42] indications, it is evident that the subcommittee—to which the parent Committee had, as we have seen, duly delegated its investigatory authority—was carrying out the specific wishes of the parent Committee when it questioned petitioner, rather than embarking on an investigatory frolic of its own. The actions of a subcommittee are ordinarily presumed to be within the scope of authority conferred by the parent Committee (*Norris* v. *United States*, 257 U.S. 77, 82), and not only is that presumption unrebutted by the evidence

[41] See testimony of Julia Jacobs, Lawrence Cover, and petitioner. (R. 219-380.)

[42] For example, during the testimony of Lawrence Cover, another member of U.E., on the same day petitioner testified,

here, but the evidence affirmatively establishes that the subcommittee was acting in accordance with its delegated authority.

C. PETITIONER'S CLAIM THAT HE WAS NOT APPRISED BY THE COMMITTEE OF THE PERTINENCY OF THE QUESTIONS THAT HE REFUSED TO ANSWER IS NOT PROPERLY BEFORE THIS COURT AND, IN ANY EVENT, LACKS MERIT

1. Having Failed To Challenge the Pertinency of the Questions Before the Committee, Petitioner Cannot Now Claim That He Was Not Apprised of Their Pertinency

Petitioner claims (Br. 121–123) that he was not adequately apprised by the subcommittee of the subject under inquiry so that he could determine whether the questions asked him were pertinent to this subject. But petitioner failed to raise this objection before the subcommittee and, under this Court's decisions, is precluded from raising it for the first time in the contempt proceeding.

(*a*) In *Hale* v. *Henkel*, 201 U.S. 43, the witness based his refusal to produce documents on the ground (among others) that it was "impossible for him to collect them within the time allowed" (p. 70). The Court indicated that it would not consider this ob-

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Congressman Doyle stated (R. 233–234):

> [W]e as a committee have had plenty of evidence * * * that the Communist Party in this country has had and does now have a continuous infiltration program to try to take control of the policies and functions of certain labor unions and our information is that the Communist Party has had that policy toward the union of which you are a member * * *
>
> We wouldn't be having you and the other people here to help us in this investigation if we didn't have pretty definite information about certain levels in U.E. * * *

jection because, "[h]ad the witness relied solely upon [this] ground, doubtless the court would have given hm the necessary time" (*ibid.*). Similarly, *United States* v. *Bryan*, 339 U.S. 323, held that a witness who, having been subpoenaed to appear and produce records before a congressional committee, appears but refuses to produce the records, may not raise at his trial for the first time the issue whether a quorum of the Committee was present. The Court stated that "[t]he defect in composition of the Committee, if any, was one which could easily have been remedied. * * * For two years, now grown to four, the Committee's investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes" (339 U.S., p. 333). Moreover, it was apparent that this witness "would not have complied with the subpoenas no matter how the Committee had been constituted at the time. * * * Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands" (pp. 333–334). See, also, *United States* v. *Fleischman*, 339 U.S. 349, 352.

These principles are fully applicable to the issue whether the witness is sufficiently apprised of the subject under inquiry and the pertinency of the questions to this subject. When a witness challenges the pertinency of a question, the congressional committee or its counsel can explain more fully the subject under inquiry and the relationship between the question and the subject, and, if necessary, can modify

the question or the precise subject under inquiry. Moreover, when a witness relies on other grounds for refusing to answer the question, the pertinency of the question, like the existence of a quorum (*Bryan, Fleischman*), becomes immaterial, since the witness would not have answered no matter how clear the committee made the pertinency of the question appear.

Accordingly, in *Watkins* v. *United States*, 354 U.S. 178, this Court stated that "[t]he final source of evidence as to the 'question under inquiry' is the Chairman's response *when petitioner objected to the questions on the grounds of lack of pertinency*" (p. 214; emphasis added); "[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency* ["] to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto" (pp. 214–215; emphasis added.)" And in *Barenblatt* v. *United States*, 360 U.S. 109, 123–124, the Court made express the implication in *Watkins*, and squarely held that the issue of pertinency must be raised before the investigating committee.

Furthermore, the Court held in *Barenblatt*, the issue

" Watkins specifically told the committee that "I do not believe that such questions are relevant to the work of this committee * * *."

" The footnote to this sentence reads "Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 800" (354 U.S., p. 215, n. 55). At page 800 of the *Kamin* opinion, then District Judge Aldrich

of pertinency is not raised by a memorandum submitted by a witness to the committee saying that "I might wish to * * * challenge the pertinency of the question to the investigation" and quoting, from an opinion of this Court, "language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency." P. 123. The Court held that "[t]hese statements cannot * * * be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate, within the meaning of what was said in *Watkins* * * * to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" (pp. 123–124). See, also, *McPhaul* v. *United States,* 364 U.S. 372, 380–381.

And in *Deutch* v. *United States,* 367 U.S. 456, 468–, where the Court found that "the petitioner was not made aware at the time he was questioned of the question then under inquiry nor of how the questions which were asked related to such a subject"—it never-

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emphasized the necessity of a specific objection on grounds of pertinency:

> The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.

theless did not reverse the witness' conviction on this ground since (p. 469):

> [T]he thoughts which the petitioner voiced in refusing to answer the questions about other people can hardly be considered as the equivalent of an objection upon the grounds of pertinency. Although he did indicate doubt as to the importance of the questions, the petitioner's main concern was clearly his own conscientious unwillingness to act as an informer. It can hardly be considered, therefore, that the objections which the petitioner made at the time were "adequate, within the meaning of what was said in *Watkins, supra,* at 214–215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection." *Barenblatt, supra,* at 124.

(*b*) In the present case, petitioner (who appeared before the subcommittee with counsel) did not make even the "contemplated" and "buried" objections to the pertinency of the questions that were made by the witness in *Barenblatt,* nor did he indicate any doubt as to the importance of the questions, such as was stated by the witness in *Deutch.* Petitioner's preliminary statement was no more than a general challenge to the power of the subcommittee to hold any hearings or to ask any questions of the witnesses before it. The statement claimed that the Committee had no valid legislative purpose, that the hearing violated the Bill of Attainder Clause of the Constitution and the First Amendment, and that the Committee's authorizing resolution did not authorize the

hearing and was unconstitutionally vague (Statement, *supra*, pp. 8–9). These contentions did not and could not constitute an objection to the pertinency of questions not yet asked. A similar statement attacking the jurisdiction and power of the committee was made by the witness in *Barenblatt*, but the Court concluded that this "general challenge to the power of the Subcommittee" was not adequate "to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" to apprise the witness of the pertinency of the questions. 360 U.S., p. 124."

Petitioner likewise did not question the pertinency of any of the particular questions asked him during the course of the hearing. Instead, he repeated the objections in his statement: that the hearing was not within the power given the Committee by its authorizing resolution; that the hearing was intended to "bust" the union, or to expose petitioner, or to try and convict him, and therefore did not have a valid legislative purpose; and that the hearing as a whole and particular questions violated the First Amendment. In addition, he claimed that the Committee relied on informers who were liars. (Statement, *supra*, p. 11). None of these objections so much

[48] Compare the legal memorandum filed by the petitioner in *Barenblatt* (see the record in No. 35, Oct. Term, 1958, pp. 227–235) with the motion in this case (R. 220, 405–406). While in *Barenblatt* the memorandum contained "contemplated" and "buried" objections on the ground of pertinency (although this Court did not consider them sufficiently clear), here petitioner's statement did not make even those "contemplated" and "buried" objections.

as hinted to the subcommittee that petitioner was claiming that he did not understand the pertinency of the questions.

2. *Petitioner Was Apprised of the Pertinency of the Questions*

Assuming petitioner had objected to the pertinency of the questions at the hearings, and the issue whether he was properly apprised of their pertinency were thus here, the claim would be without merit. We assume that there are two steps in apprising the witness. First, the subject under inquiry must be explained to the witness. Second, the pertinency of the questions asked him to the subject must be explained to him. Both requirements were satisfied here.

(*a*) Petitioner was apprised, from at least three different sources, that the subject under inquiry at the hearings was Communist activity in labor unions. *First*, at the start of the hearings on February 28, the day petitioner first testified, the chairman of the subcommittee specifically stated (R. 219):

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

This statement was made immediately before Julia Jacobs was called as the first witness. Petitioner, at the beginning of his testimony, indicated that he had heard Miss Jacobs' testimony (R. 242) and subse-

quently reaffirmed this fact (R. 274). Moreover, counsel representing petitioner also represented Julia Jacobs and was certainly present when the opening statement was made."

Second, as we have just noted, petitioner admitted knowledge of the testimony of Julia Jacobs. The questions asked by the Committee of Miss Jacobs—concerning the witness' employment and work in the labor movement and her possible Communist Party membership—clearly showed that the subject of the Committee's inquiry was Communist activity in labor unions (R. 221–227; and see R. 227–241). Miss Jacobs was questioned concerning many of the same activities about which petitioner was questioned, including the Square D strike (Hearings (GX 12; see p. 8, n. 2, *supra*), pp. 30–31) and the pilgrimage to Washington organized by the American Peace Crusade (*id.*, pp. 37–38). Moreover, Congressman Doyle explicitly restated the purpose of the hearings during Miss Jacob's testimony (R. 222):

> [M]y questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist

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" Petitioner contends (Pet. Br. 122) that the presence of his counsel when the opening statement was made is not sufficient. As we have shown, however, there is every indication that petitioner was present when the statement was made (see R. 101–109). In addition, it would certainly seem that petitioner could be charged with the knowledge of his counsel who counsel appeared for each of three witnesses (Miss Jacobs, Lawrence Cover, and petitioner) who appeared on the opening day of the hearings and the three, through counsel, filed a joint statement objecting to the Committee's authority (Statement, *supra*, pp. 8–9).

Party in your experience has undertaken to influence labor unions wherever you know anything about them.

* * * * *

May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any other group to their own Communist Party objectives.

The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening legislation dealing with subversive activities.

Third, during petitioner's appearance before the subcommittee, he was twice told by Congressman Doyle the precise subject under inquiry. Before petitioner was asked the question involved in count four, Congressman Doyle told him that the subcommittee was "trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president" (see Statement, *supra*, p. 12). Subsequently, at the time petitioner was directed to answer the question involved in count five Congressman Doyle stated (see Statement, *supra*, p. 13):

> * * * I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * * the extent to which they were using it then and are using it now for their conspiratorial purposes."

(*b*) Thus, the subject of the subcommittee's inquiry—Communist activity in labor unions—was clearly and repeatedly brought home to petitioner. In addition, all six of the questions upon which petitioner was indicted and convicted were, either on their face or as shown by the statements made to petitioner at the time, pertinent to that subject.[46] The question involved in count one—whether petitioner was at the time of the hearings a member of the Communist Party—was on its face pertinent to the subject under inquiry. This Court in *Barenblatt* stated that the pertinency of an identical question (see 360 U.S., p. 114) to the subject of Communist activity in education "was clear beyond doubt" (p. 125). It is equally

[47] See also the statements of Congressman Doyle at the start of petitioner's testimony and after petitioner had refused to answer all the questions involved in the indictment (see Statement, *supra*, p. 9, and R. 376).

[48] As noted earlier (p. 61, n. 35, *supra*), the judgment below must be affirmed if petitioner's conviction on any one of the counts was valid.

pertinent to the subject of Communist activities in the labor field.

Petitioner was also apprised of the pertinency of the question involved in count two—"[y]ou have left us under the impression at this point by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson" (Statement, *supra*, p. 11). This question, when asked of an important labor official residing in Indiana, was clearly pertinent to an investigation of Communist activities in labor unions. Similarly, petitioner was apprised of the pertinency of at least half of the information sought by the question involved in count three—whether Elmer Johnson or Henry Aron ever addressed a group of people while petitioner was present.

Before petitioner was asked the question involved in count four—whether he knew Russell Nixon to be a Party member—petitioner had been told by Congressman Doyle that the subcommittee was investigating Communist control of the U.E. Petitioner had admitted that he was acquainted with Mr. Nixon and that he knew that Nixon was legislative representative of the U.E. in Washington (Statement, *supra*, pp. 11–12). This question concerning the Communist Party membership of a high union official was just as pertinent to the subject of Communist activities in labor unions as the question concerning whether petitioner himself was a Party member.

The subcommittee also explained to petitioner the question involved in count five—whether he had "an

active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (Statement, *supra*, pp. 12–14). The Committee counsel told petitioner that the question was directed to discovering "the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power." And Congressman Doyle stated that he wished to discover (Statement, *supra*, p. 13):

> * * * [W]hat the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

In addition, before petitioner was asked the question involved in count six—who had solicited him as a sponsor of the American Peace Crusade—he was shown an article in the *Daily Worker* listing a "John Gojack, international vice-president, UERWMA" as an original sponsor of that organization (Statement, *supra*, p. 14).[49]

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[49] Petitioner does not raise the distinct issue whether the government proved at his trial that "the questions propounded by the congressional committee were in fact 'pertinent to the

D. PETITIONER WAS ADEQUATELY APPRISED THAT HIS OBJECTIONS TO THE COMMITTEE'S JURISDICTION HAD BEEN REJECTED

Petitioner contends that the Committee was required and failed to overrule his written objections to the Committee's jurisdiction (Statement, *supra*, pp. 7–9) before he was questioned. However, this contention is not properly before this Court, since, as pointed out by the court of appeals (348 F. 2d, pp. 356–358), it was not raised by petitioner's experienced counsel in either the district court or the court of appeals. Petitioner concedes as much, and offers no justification or excuse (Pet. Br. 126, n. 118).

In any event, the contention is without merit. Since petitioner's objections went not to specific questions, but to the very jurisdiction of the Committee to proceed with the inquiry (R. 405–406), the subcommittee's action in proceeding with the hearings and calling the three witnesses—including petitioner—on whose behalf the objections had been filed was an inescapable sign to petitioner and the others that the subcommittee had in fact rejected these objections.[80] Moreover, although petitioner's objections were in the form of a

question under inquiry' by the committee." *Deutch* v. *United States*, 367 U.S. 456, 468. And since this issue was not presented in the petition for certiorari, it is not before the Court. In any event, the evidence which we have relied upon to show that petitioner was apprised of the pertinency of the questions when he appeared before the subcommittee likewise demonstrates that the questions were, in fact, pertinent to the subject under inquiry.

[80] The subcommittee's counsel stated at the hearings that the motion had been considered by the subcommittee at the beginning of the hearings and that the subcommittee had unanimously voted at that time to overrule it (R. 374–375).

motion to vacate the subpoenas and set aside the hearings, neither counsel nor the witnesses (including petitioner) on whose behalf the motion was filed asked for a ruling before the witnesses were sworn—as they surely would have had they believed the Committee had not yet considered and disposed of their motion. Counsel merely asked that his motion challenging the Committee's jurisdiction be filed for incorporation in the record. A further indication that petitioner and the other witnesses understood perfectly that the Committee had rejected their objections may be found in the fact that the witnesses appeared in response to the subpoenas, were sworn, and answered some questions. In addition, petitioner was specifically directed to answer each question forming the basis of a count of the indictment (R. 269–270, 287–289, 296–297, 341–342, 361–362, 369);[51] he was informed that these directions to answer were being given to establish a predicate for a motion to cite him for contempt (R. 265, 269) (compare *Bart* v. *United States,* 349 U.S. 219, 222); and the subcommittee persisted in demanding answers to its questions even after petitioner on numerous occasions orally repeated the contention made in his written motion that the hearing was completely unauthorized and invalid (*e.g.,* R. 283, 290, 328, 340).

In these circumstances, we fail to see how petitioner could have doubted that the Committee had overruled

[51] The directions to answer the questions in counts three, four, five, and six followed Congressman Moulder's statement to petitioner that the subcommittee "understand[s] you object to all the questions being propounded here to you during this procedure" (R. 292)—another clear indication that the objections had been rejected by the subcommittee.

his objection to the hearings." In *Quinn* v. *United States*, 349 U.S. 155, 170—on which petitioner relies (Br. 125)—this Court held that the Committee is not required to use any set formula to indicate its disposition of an objection. Since it is plain that petitioner here was not "forced to guess the committee's ruling" on his objection to its power to proceed, we submit that "he has no cause to complain" (349 U.S., p. 170)."

III. THE INDICTMENT SUFFICIENTLY ALLEGED THE AUTHORITY OF THE COMMITTEE

Petitioner contends (Br. 29–45) that it is not sufficient for the indictment in a contempt-of-Congress case to allege that the particular subcommittee before which the witness appeared was authorized to act, but that the details of that authority must also be pleaded. In *United States* v. *Seeger*, 303 F. 2d 478 (C.A. 2) (following *United States* v. *Lamont*, 236 F. 2d 312

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[15] That petitioner was aware of the Committee's ruling and fully intended to persist in his refusal to answer notwithstanding such ruling is shown by the fact that, after the subcommittee counsel's statement for the record that the subcommittee had voted unanimously to overrule the motion at the beginning of the hearings (see p. 83, n. 50, *supra*), petitioner again refused to answer the question specified in count one—"Are you now a member of the Communist Party?"—despite a direction that he answer (R. 379).

[16] In addition, the subcommittee expressly rejected in advance substantially the same objections petitioner had made in his motion when they were renewed as to specific questions. Compare petitioner's motion, described in the Statement, *supra* pp. 8–9, with the objections made prior to and upon the questioning forming the basis of count one: R. 242, 244, 264, 266, 269–270; count two: the foregoing plus R. 283, 287, 288, 289; count three: all the foregoing plus R. 290, 294–297; count four: all the foregoing plus R. 328, 340, 341–342; count five: all the foregoing plus R. 361–362.

(C.A. 2)), the Court of Appeals for the Second Circuit indicated that an indictment for contempt of Congress involving the House Un-American Activities Committee must show that the subcommittee was in fact authorized to conduct the inquiry in question.[54] The Court of Appeals for the District of Columbia Circuit, on the other hand, regards a conclusory allegation of authority as sufficient for purposes of the indictment. *Sacher* v. *United States*, 252 F. 2d 828, reversed on other grounds, 356 U.S. 576; *Shelton* v. *United States*, 280 F. 2d 701, reversed on other grounds *sub nom. Russell* v. *United States*, 369 U.S. 739.[55]

A. We think that the view of the District of Columbia Circuit—that only the ultimate fact of the subcommittee's authority need be alleged—is the better view and fully consistent with the general principles of this Court's *Russell* decision. So far as is pertinent here, the purpose of an indictment is "to inform the defendant of the nature of the accusation against him." 369 U.S., p. 767. A conclusory allegation of authority surely suffices to place a de-

[54] Actually, the holdings of both *Seeger* and *Lamont* are narrower. See p. 90, n. 59, *infra*, and p. 92, n. 61, *infra*.

[55] In *Russell*, *supra*, this Court, in reversing six companion cases from the District of Columbia Circuit on the ground that the indictments were insufficient because the subject under inquiry had not been alleged, did not pass upon the rule of that circuit that the details of a subcommittee's authority need not be recited. That rule had been challenged in three of the six companion cases. See the briefs for petitioners in *Whitman* v. *United States*, *Liveright* v. *United States*, and *Price* v. *United States*, Nos. 10, 11 and 12, Oct. Term, 1961.

fendant on notice—without any ambiguity or uncertainty—of the precise nature of the accusation in a contempt-of-Congress case: that he willfully refused to answer pertinent questions when "summoned as a witness by the authority of either House of Congress" (2 U.S.C. 192). It surely comports with the spirit as well as the letter of Rule 7(c) of the Federal Rules of Criminal Procedure, which provides that "[t]he indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

To be sure, if the defendant refused to answer questions put to him by a subcommittee not authorized by Congress to conduct the inquiry, he could not be guilty of violating 2 U.S.C. 192; but that, we think, is properly a matter of proof rather than pleading. So long as the fact of authority is pleaded, the defendant should have no difficulty in determining—from the applicable resolutions of Congress and the Committee (see pp. 88–90, *infra*)—whether such allegation is true.[38] There is certainly no danger here like that found in *Russell*, where the indictments failed to specify the subject under inquiry by the subcommittee. Without the guidance of such specification, the defendants and the trial and appeal courts, in this Court's view, were unable to determine whether the questions asked were pertinent. We find no similar uncertainty in omitting from the indict-

[38] If he has any question as to the precise chain of authority, he can file a motion for a bill of particulars. Indeed, petitioner in this case filed such a motion—but sought no further specification of the chain of authority. (R. 5.)

ment the links in the chain of authority from Congress to the subcommittee. Pertinency depends on the subject under inquiry—not whether the inquiring tribunal was an authorized one."

B. This Court need not, however, resolve in the present case the alleged conflict on this point between the Second and District of Columbia Circuits, since the indictment here was sufficient even under the Second Circuit's strict standard. The present indictment not only alleges that the subcommittee was authorized but fully narrates the basis of its authority.

The relevant portion of the indictment begins by reciting (R. 1–2) the legislation that established the House Committee on Un-American Activities (the Legislative Reorganization Act of 1946, 60 Stat. 828) and the specific House Resolution reaffirming the Committee's existence at the beginning of the new Congress during the term of which petitioner was

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"We derive support on this point from *United States* v. *Debrow*, 346 U.S. 374. Involved in that case was an indictment for perjury, an offense which, as the Court noted in *Russell*, *supra*, presents to contempt charges a "persuasive [analogy] for some purposes" (369 U.S., p. 771, n. 18). An element of the offense of perjury is that the defendant's oath was "taken before a competent tribunal" (*Debrow*, *supra*, 346 U.S., p. 376). An indictment was approved in *Debrow* which alleged as to this element that the competent tribunal was a subcommittee of a Senate committee, "known as the Subcommittee on Investigations, a duly created and authorized subcommittee of the United States Senate" (p. 375). If the allegation of "duly created and authorized" is sufficient to satisfy the element of "competent tribunal" in a perjury case, it should, we think, suffice here.

subpoenaed and appeared (H. Res. 5, 84th Cong., 1st Sess.)."* These provisions not only define the scope of the investigatory authority granted to the Committee but in addition specifically provide that such authority may be exercised by subcommittees. The indictment then relates that the parent Committee authorized the

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*Both the Act and the resolution provide as follows:

Rule X

Sec. 121. Standing Committees

* * * * *

17. Committee on Un-American Activities, to consist of nine members.

Rule XI

Powers and Duties of Committee

* * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

* * * * *

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary.

subpoenaing of petitioner to testify at hearings to be conducted by a subcommittee and that the sub-committee to conduct the hearings was appointed by Chairman Walter pursuant to Committee resolution of January 20, 1955. This resolution (GX 4, R. 209–210) provides, as has been mentioned (pp. 68-69, *supra*), that the Chairman is "authorized * * * to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform * * *." The indictment then alleges that the hearings at which petitioner testified were held by the subcommittee under the specified "appointment and authorizations" (R. 2).

Thus, the indictment sets forth a complete chain of authority from Congress to the subcommittee before which petitioner appeared. It alleges that Congress authorized the Un-American Activities Committee to investigate subversive activities and to delegate its full investigatory authority to subcommittees; that the Committee decided to question petitioner in aid of such an investigation; and that it duly delegated authority to do so to the subcommittee before which petitioner appeared. There is no missing link." Surely, further allegations on the question of the subcommittee's authority were not required to enable petitioner to defend against the contempt-of-Congress charge.

Petitioner argues (Br. 31–36) that the missing link is the failure to allege that the Committee delegated

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" *United States* v. *Lamont*, 236 F. 2d 312, is thus not in point, since in that case there was "no allegation * * * linking the inquiry conducted by the subcommittee to the grant of authority dispensed to its parent committee." P. 317.

only a limited part of its investigatory authority to the subcommittee. But the Committee generally operates through subcommittees, and, when it does, the subcommittee is empowered to exercise the full authority of the Committee. Both the authorizing statute and the authorizing resolution, as we have seen, specifically provide for such an exercise of the power granted. And as the examples of authorizing resolutions gathered by petitioner show (Br. 37), even when the Committee sets forth in writing certain topics to be covered by the subcommittee, it carefully and customarily includes a general grant of authority to permit the subcommittee to act on "all other matters within the jurisdiction of the Committee." And, of course, the same was accomplished by the Committee's resolution of January 20, 1955, under which the subcommittee before which petitioner appeared was constituted (see pp. 89–90, *supra*). Although the parent Committee, when performing its functions through a subcommittee, may choose to limit the subcommittee's authority to narrower limits than that granted the Committee, there is no requirement that it do so and it did not do so here. Therefore, there is no basis for the allegation that petitioner urges should have been included in the indictment.[*]

Thus, on the facts of this case, there is no real conflict with the Second Circuit's *Seeger* decision (or, as noted above, n. 59, with the *Lamont* deci-

[*] We grant, of course, that a subcommittee may not exceed the scope of the authority delegated to it (see pp. 67–71, *supra*). We do not think the indictment need so allege, if, as here, it fully sets forth the chain of authority from Congress to the subcommittee in question.

sion on which the court in *Seeger* relied). The defect in the indictment involved in *Seeger* was that one of the authorizing resolutions—an essential step in the chain of authority—was left out."[11] There is no such defect in the present indictment; no link in the chain of authority was omitted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APRIL 1966.

[11] The first paragraph of the indictment purports to relate the substance of a resolution passed by the Committee on Un-American Activities on June 8, 1955 directing the subcommittee to conduct the investigation. The second paragraph then states that "pursuant to said direction" the subcommittee conducted the hearings at which Seeger appeared as a witness. But the resolution of June 8, 1955 * * * was *not* such an authorization to the subcommittee. It was merely a direction to the parent Committee's clerk to proceed with an investigation. * * * The resolution of July 27, 1955 * * *, which actually purports to authorize the subcommittee to proceed with the hearings was nowhere mentioned. In other words, * * * the indictment contained a wholly misleading and incorrect statement of the basis of that authority. [303 F. 2d, p. 484.]

APPENDIX I

COMMITTEE ON UN-AMERICAN ACTIVITIES ANNUAL REPORT FOR THE YEAR 1954 [1]

This Annual Report of the Committee on Un-American Activities for the year 1954 is submitted to the House of Representatives in compliance with that section of Public Law 601 (79th Cong.) which provides: "The Committee on Un-American Activities shall report to the House (or to the Clerk of the House, if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable."

* * * * *

Early in 1954 the Attorney General of the United States advised the Congress that certain legislation was considered necessary to strengthen effectively the national security. Four of these recommendations by the Attorney General were embraced within those previously made by the committee. These were for capital punishment in instances of espionage committed in time of peace; immunity for certain witnesses appearing before duly authorized Federal bodies; for the admissibility of evidence secured by wiretapping or technical devices; and for legislation to break Communist control over certain labor unions. The Congress in 1954 passed and the President signed into law three of these recommendations originally proposed by this committee and subsequently requested by the Attorney General. A law permitting the use

[1] Portions of the Report were read into the record below, see Tr. 269-271.

of evidence secured by technical devices in cases involving espionage and matters relating to internal security passed the House but did not obtain approval in the Senate.

On the basis of hearings and investigations, the committee during 1954 issued several reports to the Congress and the American people. The first of these reports was "Colonization of America's Basic Industries by the Communist Party of the U.S.A." This report reflects the committee's findings on the Communist Party's endeavors to secure a foothold in the vital basic industries of the country. The committee points out in this report that the Communist Party had directed its intellectuals and white-collar workers to leave employment in their own chosen fields and to obtain positions in industries vital to defense, such as steel, electricity, and the maritime. In many cases, persons were required to leave their homes and travel to distant cities in order to carry out this Communist directive. The committee issued this report to warn and alert the Congress and the industries involved regarding these efforts by the Communist Party in the United States.

* * * * *

The committee also reported the details of an exhaustive investigation and hearings relating to a publication, which while posing as a legitimate trade-union journal, is in reality nothing more than a mouthpiece for Communist propaganda. The "Report of the March of Labor" clearly establishes the Communist "front" character of that publication.

* * * * *

INVESTIGATION OF COMMUNIST ACTIVITIES IN VARIOUS CITIES AND STATES

On April 7 through April 9, 1954, a subcommittee of the Committee on Un-American Activities resumed hearings in Albany, dealing principally with Communist infiltration of vital defense industries and education within the capital area and throughout the State of New York and adjacent States.

* * * * *

Mr. Leo Jandreau, former business agent for United Electrical Radio and Machine Workers of America, Local 301, General Electric Workers, Schenectady, N.Y., who at the time of his testimony was business agent for IUE-CIO, Local 301, testified that he had never been a member of the Communist Party.

* * * * *

Chicago, Ill.

The subcommittee received testimony in elaboration and corroboration of previous testimony relative to the Communist control of the Farm Equipment Workers of the United Electrical, Radio, and Machine Workers of America (FE–UE). This testimony was furnished the committee by Mr. Walter W. Rumsey. In the course of this testimony Mr. Rumsey identified as a Communist John T. Watkins, who has served as an official of the United Farm Equipment and Metal Workers before and after its expulsion from the CIO. The Committee investigators endeavored to locate Mr. Watkins as well as Abe Feinglass, another union official who had been identified as a member of the Communist Party. These efforts were unsuccessful and Mr. Watkins and Mr. Feinglass were heard later in Washington, D.C. In view of Mr. Watkins' denial of Communist Party membership and his refusal to

answer questions concerning individuals known to him as being members of the Communist Party, the committee voted to refer all testimony relating to this matter to the Department of Justice for possible perjury prosecution and the Congress subsequently approved the committee's recommendation that Mr. Watkins be cited for contempt of Congress.

* * * * *

Dayton, Ohio, Area

Continuing the committee's investigation of Communist infiltration in basic industries throughout the United States, hearings were held in Dayton, Ohio, September 13, 14, and 15 of this year. The Committee was fortunate in having the testimony of one Arthur Paul Strunk, who had for more than 7 years served as financial secretary for the Dayton Communist Party while acting as an undercover agent for the Federal Bureau of Investigation. Mr. Strunk was not only able to give the committee a complete picture of the activities of the Communist Party in the Dayton area since 1945, but was also able to document and completely expose the part played by the Communist Party in the Univis Lens strike in 1948.

* * * * *

In connection with role of the Communist Party in the Univis Lens strike, your committee was again fortunate in having the testimony of one Loethar Wornstaff, one of the few non-Communist members of the strike strategy of the UE during this strike.

* * * * *

Michigan

These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Michigan, in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained.

The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success. The concentration of the Communist Party as outlined by this report is not the figment of a dream by the committee but comes directly from the Communist Party itself. This concentration is set forth in a directive to all Communist groups, sections, commissions, and departments, which the committee obtained during its investigation. This directive, while intending to advertise the Communist Party as an organization interested in furthering the trade-union movement, falsifies its own advertisement by placing all emphasis on the need to repeal all laws used against the Communist Party and its members, including the Smith Act, the non-Communist affidavit section of the Taft-Hartley law and the Walter-McCarran Immigration Act. Of secondary importance in the directive, but equally stressed, is what the Communists refer to as "the People's Peace" program. This program is set forth as a campaign against NATO, friendship with the Soviet Union, and the opening of trade channels with the "People's Democracies", China, and the Soviet Union.

As a result of the hearings held in Michigan in 1952 and again in 1954, the Committee on Un-American Activities calls upon the American labor movement, in addition to its ever increased vigilance toward communism, to amend its constitutions where necessary in order to deny membership to a member of the Communist Party or any other group which dedicates itself to the destruction of American's way of life. It is certainly not within the best interests of the security of the United States, nor of the interest of the unions, to permit a member of the Communist Party or any other totalitarian party to work 8 hours a day in an American industry with the protection of a union contract and, at the same time, supply him with a captive audience of thousands through which he can preach his program of destruction. It is said that the worker if far too smart to be suckered into accepting the Communist harangue. It is admitted that the American worker, through education on the evils of communism and other totalitarianisms by both his union and his employer, has more knowledge on the subject today than at any time during his life. Nevertheless, the Communist Party is receiving new recruits daily from the ranks of labor, admittedly not so many as in the past. It is difficult to believe, however, that this recruitment would be as great if Communist Party organizers and advocates were removed from the captive audience which union and industry place around them in the shop.

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PACIFIC NORTHWEST AREA

(Portland, Oreg.)

The House Committee on Un-American Activities held hearings in Portland, Oregon, June 18 and 19, 1954. The hearings and investigation centered largely around communistic infiltration of education, professional groups, and labor.

APPENDIX II

COMMITTEE ON UN-AMERICAN ACTIVITIES ANNUAL REPORT FOR THE YEAR 1955 [1]

In accordance with the committee's rules of procedure all investigations during the past year were instituted after approval by a majority of the members of the committee. At the opening of each public hearing the presiding chairman clearly outlined the purpose of the investigation and hearing. At no public hearing were there fewer than two members of the committee in constant attendance. Persons identified for the first time in public hearing as having subversive affiliations were notified of the fact by registered letter, where practicable.

Wide-ranging investigations and hearings by the committee last year uncovered such evidence as the following:

* * * * *

Documented proof that a Communist-dominated union siphons off workers' dues for Communist purposes was produced in the course of committee investigations and hearings on District 9 of the United Electrical, Radio, and Machine Workers of America. UE District 9 supervises union locals in Indiana and Michigan from headquarters in Fort Wayne, Indiana. These hearings were printed under the title, "Fort Wayne, Ind., Area."

* * * * *

[1] Portions of the Report were read into the record below, as Tr. 272–286.

Newark, N. J. Area

Evidence of the continued Communist domination of the UE was graphically presented by these witnesses. Their testimony was bolstered by the appearance before the committee of 12 current officials, organizers or employees of the UE in the Newark area. The 12 consistently invoked their constitutional privilege against self-incrimination in refusing to answer questions by the committee, despite previous testimony placing these individuals in the Communist Party. Top official among the 12 was James McLeish, Sr., president of the UE District Council 4, who administers union affairs in southern New York and northern New Jersey from headquarters in Newark.

The now familiar pattern of a handful of Communists wielding iron control over union locals composed of hundreds of members was outlined again at the Newark hearings. Witness Pollock had joined the Communist Party with the understanding that such membership was essential to his holding the positions of international organizer and local president in the UE. He described Communist Party caucuses at which 7 or 8 Communist Party members decided what the union would do at its regular meetings. Union funds were diverted to various projects of the Communist Party and its front organizations and to subscriptions to Communist publications under the guidance of this minority, whose rule was facilitated by failure of the majority of union members to attend union meetings.

An extraordinary and courageous fight, waged by a handful of loyal American trade unionists against strongly entrenched Communist leaders of a UE local in Newark, was related to the committee by Anthony

DeAquino and Julius Kolovetz. The two witnesses testified that, as members of UE Local 447 representing some 5,000 employees, they were disgusted to find that Communists "owned the union, lock, stock, and barrel and treasury" and "did anything they wanted and how they wanted to do it". Mr. DeAquino and Mr. Kolovetz decided to join the Communist Party cell within the union in order to gather evidence for a showdown fight with the Communists for control of the union. While posing as Communists, the two men obtained firsthand lessons in totalitarian methods. They observed the Communists' complete disregard for union rules whenever the interests of the Communist Party came in conflict. They saw union funds drained off for Communist Party campaigns and front organizations; they participated in a Communist-led strike involving no legitimate labor issue; and they obtained documentary evidence that worker seniority records were tampered with in order to save the jobs of Communists at the expense of loyal employees.

When this evidence was finally presented to the total membership of local 447, Communists were voted out of control. But not before the two witnesses suffered physical violence from Communist gangs as well as fantastic smear attacks. Mr. DeAquino was represented as a safe-robber to the union membership and diabolic attempts were made to break up his home. Furthermore, to circumvent Communist chicanery in the crucial union election which ousted the Communists, loyal unionists were required to go to the considerable expense of hiring the services of the Honest Ballot Association.

This aggressive action by Mr. DeAquino and Mr. Kolovetz in fighting Communist domination of their union is without comparison in the record of this com-

mittee's hearings. The committee expresses its admiration of these trade unionists and hopes that their story may prove profitable to other loyal unionists who are still victims of a ruthless Communist leadership. The extreme difficulties, and indeed actual physical dangers, involved in the removal of Communists in control of unions, demonstrate the need for a speedy application of legislation enacted last year to curb Communist domination of unions. The legislation, which was recommended by this committee, will strip unions of bargaining rights before the National Labor Relations Board when the Subversive Activities Control Board has determined such unions to be Communist-infiltrated and controlled.

* * * * *

Fort Wayne, Ind., Area

The committee's continued investigation into Communist-dominated unions last year produced documented proof that leaders of such unions have misappropriated workers' dues for Communist Party purposes.

Proof was obtained in the course of preparation for committee hearings on the activities of District 9 of the United Electrical, Radio, and Machine Workers of America. This district has headquarters in Fort Wayne, Indiana, and supervises the affairs of local unions in both Indiana and Michigan.

The national organization of UE was expelled from the CIO in 1949 because of the union's flagrant subservience to the Communist Party line. The committee scheduled an investigation and hearing in 1955 to determine whether the district office which guides locals in two important Midwest States was continuing the discredited policies of the national UE

and placing Communist Party objectives above union interests.

Investigation preceding the hearings showed that District 9 of the UE was in fact operating under the control of Communists and their apologists, with workers' interests only a secondary concern when party purposes conflicted. In the course of this investigation, the committee obtained the official minutes of various meetings of the executive board of UE District 9. These documents contained incontrovertible evidence that the leadership of District 9 had diverted workers' union dues to the support of the Communist Party.

The minutes obtained by the committee covered meetings of the District 9 executive board held on December 16, 1950; February 2, 1952; March 28, 1952; September 10, 1952; and October 6, 1952. With the record of only five executive board meetings in its possession, the committee can document the appropriation of more than $2,000 to Communist causes. The committee finds this practice particularly reprehensible in view of the fact that this money came from dues paid by workers who sincerely believed they were strengthening legitimate labor objectives. Less than 5 percent of the workers represented by Communist union leadership are members of or sympathetic to the Communist Party. Therefore, 95 percent of the membership of such unions are loyal Americans unwillingly or unwittingly forced to help finance a subversive conspiracy whose ultimate aim would destroy the very concept of a free labor movement.

Among the Communist organizations to which the district 9 executive board diverted workers' dues are the National Negro Labor Council, which has been

cited as subversive by the Attorney General, and the Prisoners' Relief Committee, which solicited financial help for Communist Party leaders arrested under the Smith Act. District 9 also "generously" gave away workers' money to such notorious individuals as Harry Bridges and Harold Christoffel. Harry Bridges had been seeking funds to fight deportation proceedings. Harold Christoffel was active with other Communists in the Allis-Chalmers strike, which attempted to sabotage war production during the Hitler-Stalin pact. He had sought funds to defend himself against a perjury conviction resulting from his appearance before the House Committee on Education and Labor. By no stretch of the imagination can these expenditures serve the interests of any worker or union.

A number of present or former leaders in the affairs of UE District 9 were summoned to appear before the committee in public hearing in order to explore more fully the Communist abuse of the concept of unionism.

Witnesses heard by the committee included: John T. Gojack, president of UE District 9; David Mates, a UE international organizer assigned to district 9; and Julia Jacobs, former secretary to John Gojack in Fort Wayne, Indiana, and at the time of her appearance office secretary of UE Local 931 in St. Joseph, Michigan. These witnesses refused to answer all questions put to them by the committee regarding Communist influences in their union. All but one invoked the fifth amendment when questioned concerning charges regarding their own membership in the Communist Party.

Mr. Gojack invoked the First amendment in abusive and contemptuous testimony before the com-

mittee, and the House of Representatives has formally requested the Department of Justice to institute legal proceedings against Mr. Gojack for contempt of Congress.

The attitude of Mr. Gojack before the committee belied his professions of concern for the rights of organized labor. So does his record of energetic support of the Communist Party over a period of many years.

Julia Jacobs, the office secretary of local 931, St. Joseph, Michigan, is a Communist servitor whom the Communist have moved about at will. When she was identified as a Communist Party member in Ohio and her usefulness impaired, she was moved to Fort Wayne, Indiana, where she became a secretary to John Gojack. When need for a militant Communist became vital in St. Joseph, Michigan, she was again moved. In St. Joseph she devoted much of her effort to deceiving workers into believing that support of the Communist Party and its members was support of the trade-union movement as a whole.

David Mates, the UE international organizer, has been a Communist Party functionary for years. Evidence in the possession of the committee indicates that he was chairman of the Labor Commission of the Communist Party for Michigan. Mr. Mates was responsible for the employment of many Communists in local union offices. In this manner, the Communist Party always had informers in the midst of the workers.

The committee has been trying to determine whether or not these informers are utilized by the Communist Party for the purpose of industrial espionage. The three aforementioned witnesses possess important knowledge which could assist the committee in its in-

vestigation of this type of Communist subversion. Their refusal to answer questions thwarted the legislative process to an extent only the witnesses themselves know. Fortunately, documents obtained during the investigation added much to the knowledge which the Congress possesses on the international Communist conspiracy as it relates to the labor movement.

U.S. GOVERNMENT PRINTING OFFICE: 1949